

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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BLANCHE CASCADEN, as Administratrix of the Estate of  
DAVID H. CASCADEN, Deceased, (Substituted Plain-  
tiff for DAVID H. CASCADEN and BLANCHE CAS-  
CADEN, as Guardian of the Estate of DAVID H. CAS-  
CADEN, an Insane Person,

Plaintiff in Error,

vs.

GEORGE WEBER,

Defendant in Error.

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Transcript of Record.

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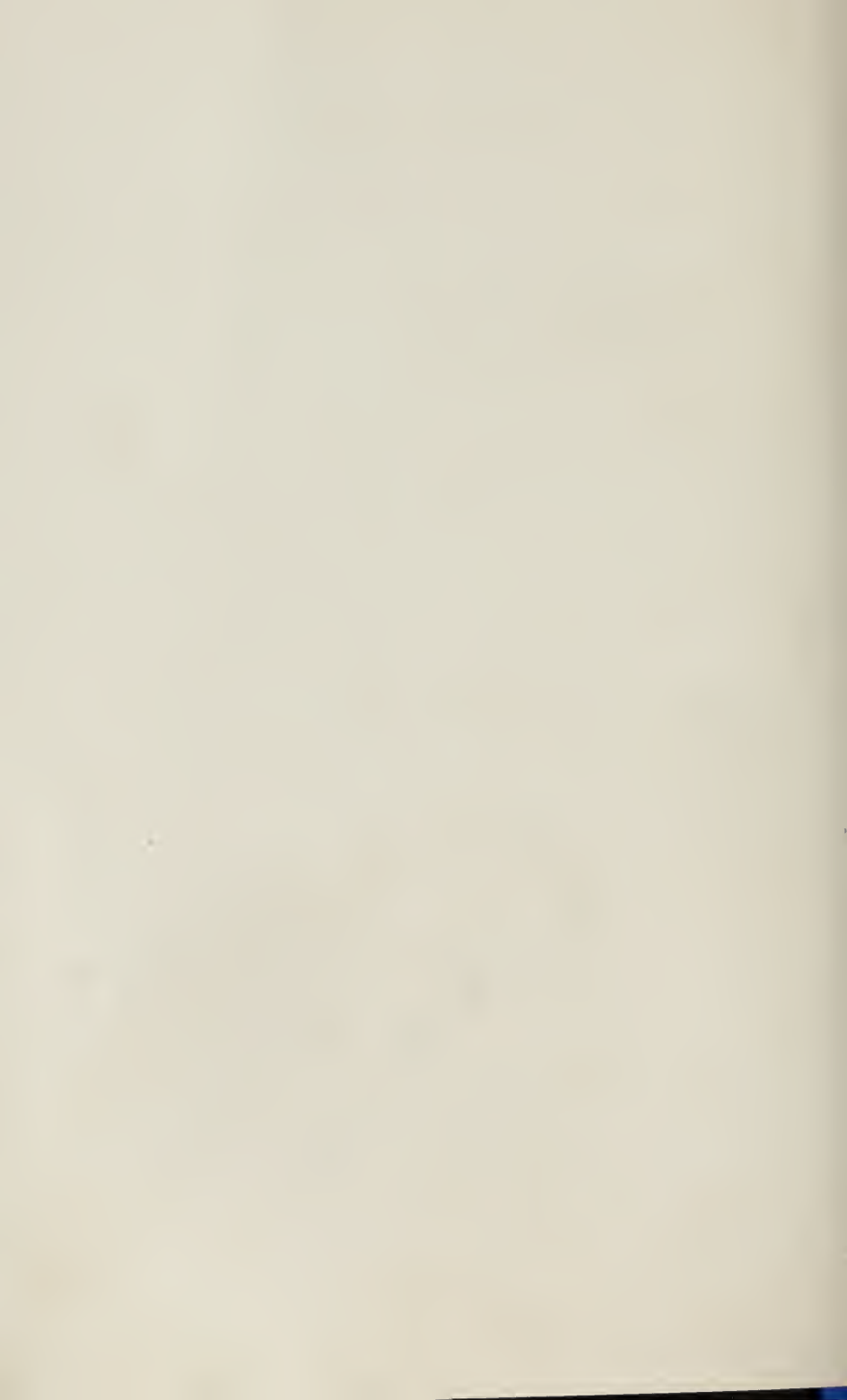
Upon Writ of Error to the United States District Court of the  
Territory of Alaska, Fourth Division.

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FILED

MAY 6 - 1923

U. S. DISTRICT COURT  
ALASKA



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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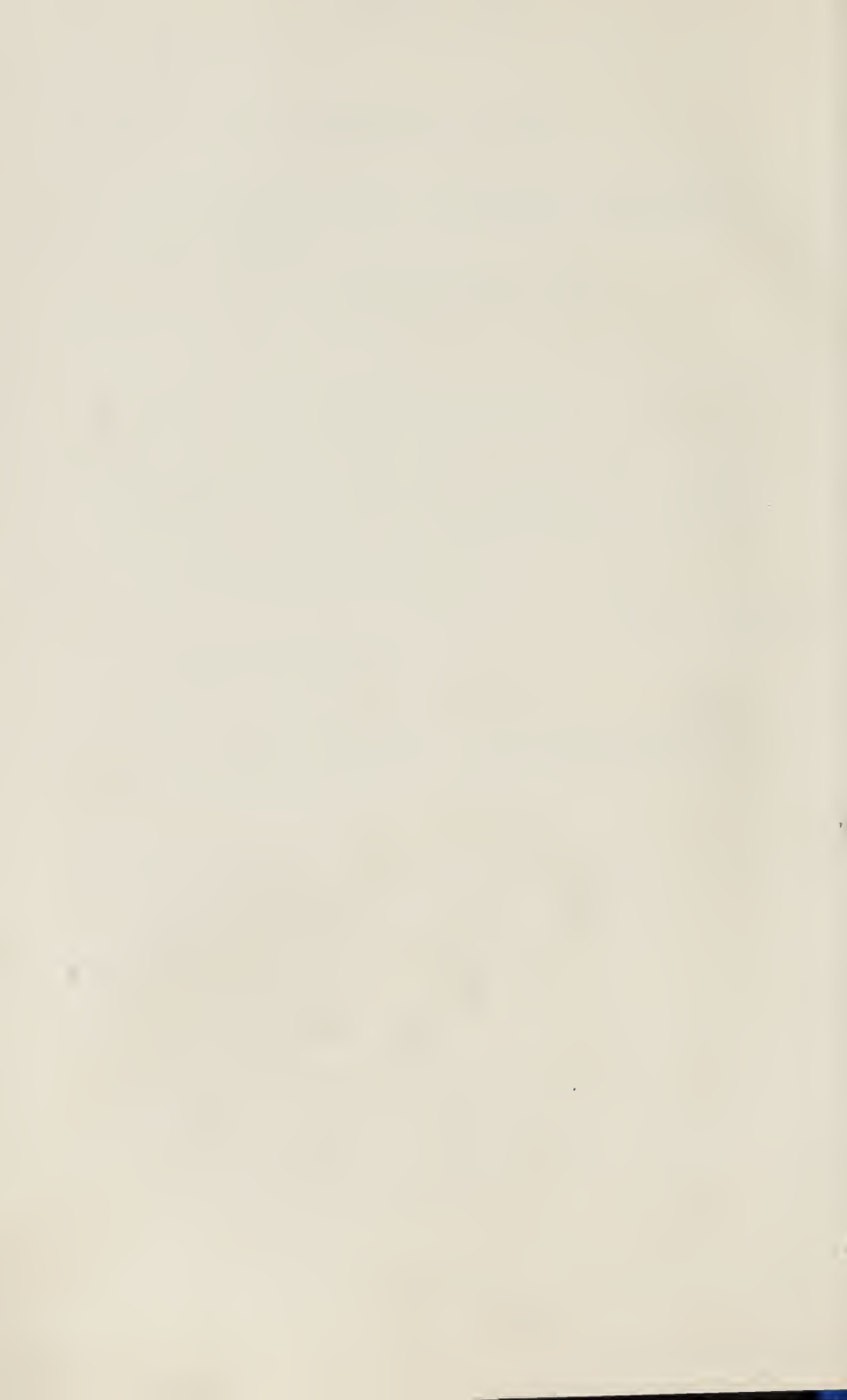
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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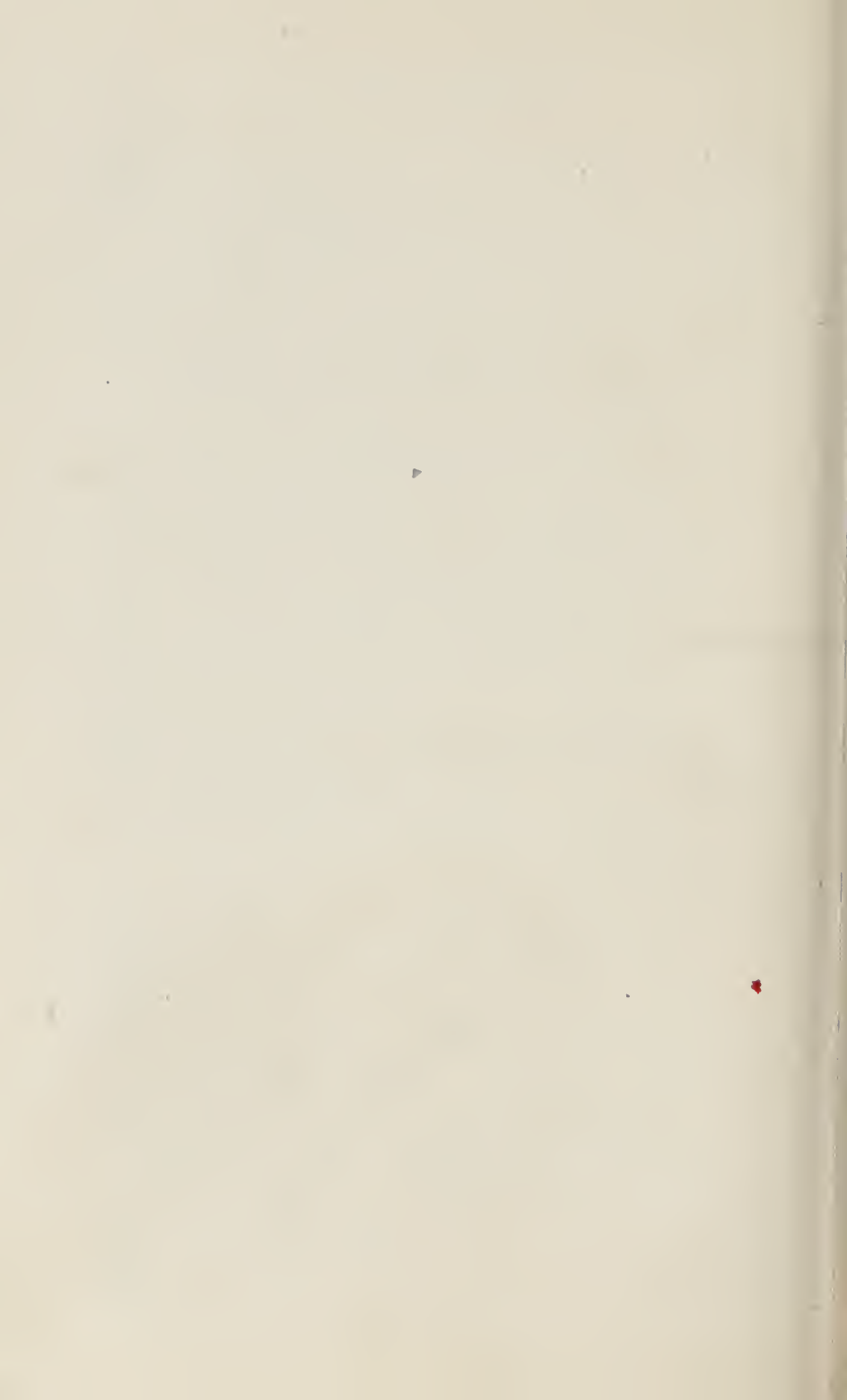
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**Names and Addresses of Attorneys of Record.**

JOHN A. CLARK, Attorney for Plaintiff and  
Plaintiff in Error, Fairbanks, Alaska.

R. F. ROTH, Attorney for Defendant and Defendant  
in Error, Fairbanks, Alaska.

[1\*]

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In the District Court for the Territory of Alaska,  
4 Division.

No. 2579.

BLANCHE CASCADEN, as Administratrix of the  
Estate of DAVID H. CASCADEN, De-  
ceased,

Plaintiff,

vs.

GEORGE WEBER,

Defendant.

**Stipulation Re Printing of Transcript of Record.**

It is hereby stipulated that, in printing the papers and records to be used on the hearing on the writ of error in the above-entitled cause, for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit, the title of the Court and cause in full on all papers shall be omitted, except on the first page of said record, and that there shall be inserted, in place of said title, on all papers used as a part of said record,

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\*Page-number appearing at foot of page of original certified Transcript of Record.

the words "Title of Court and Cause," also, that all endorsements on all papers used as a part of said record shall be omitted, except the clerk's file marks and the admission of service.

Dated at Fairbanks, Alaska, on this 31st day of July, A. D. 1923.

JOHN A. CLARK.

Attorney for Plaintiff in Error.

R. F. ROTH,

Attorney for Defendant in Error.

Filed Jul. 31, 1923. Robert W. Taylor, Clerk.  
By Grace Fisher, Deputy. [2]

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[Title of Court and Cause.]

**Praeceptum for Transcript of Record.**

To Rob't W. Taylor, Clerk of the above-entitled Court:

You will please prepare transcript of the record in the above-entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California, on writ of error heretofore perfected to said Court, and will include in said transcript the following documents, papers, and records, to wit:

- (1) Complaint.
- (2) Amended answer, as amended by interlineation.
- (3) Amended reply.

- (4) Bill of exceptions, and order allowing and settling same.
- (5) Judgment.
- (6) Petition for writ of error.
- (7) Assignment of error.
- (8) Suggestion of death and petition for substitution of party plaintiff.
- (9) Order reviving action and substituting Blanche Cascaden as administratrix of the estate of David H. Cascaden, deceased, as party plaintiff.
- (10) Order allowing writ of error and fixing cost bond.
- (11) Writ of error (original).
- (12) Citation on writ of error (original).
- (13) Undertaking on writ of error.
- (14) Order extending time for docketing and entering writ of error with Clerk of Circuit Court of Appeals (original).
- (15) Stipulation relative to printing record (original).
- (16) Praecipe for transcript.
- (17) Order extending time within which to serve and present for settlement plaintiffs' proposed bill of exceptions. [3]

This transcript to be prepared as required by law and the orders and rules of this Court and of the United States Circuit Court of Appeals for the Ninth Circuit, and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California, on or before the twenty-first day of



September, A. D. one thousand nine hundred twenty-three, pursuant to the order of this Court extending time.

Dated at Fairbanks, Alaska, on this, the 31st day of July, A. D. one thousand nine hundred twenty-three.

JOHN A. CLARK,

Attorney for Plaintiff in Error.

Due service of the foregoing praecipe and receipt of copy thereof, admitted this 31st day of July, 1923.

R. F. ROTH,

Attorney for Defendant in Error.

[Indorsed]: Filed Jul. 31, 1923, Rob't W. Taylor, Clerk. By Grace Fisher, Deputy. [4]

---

[Title of Court and Cause.]

### **Complaint.**

Comes now the plaintiffs above named and complain of the defendant above named, and for cause of action, allege as follows, to wit:

#### **I.**

That on or about the 26th day of August, 1921, David H. Cascaden was, by the Probate Court in and for the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, duly and regularly adjudged an insane person.

#### **II.**

That thereafter and on or about the 6th day of September, 1921, Blanche Cascaden, plaintiff here-



in, was by the United States Commissioner and *ex-officio* Probate Judge in and for Fairbanks Precinct, Division and Territory aforesaid, duly and regularly appointed guardian of the estate of the said David H. Cascaden, an insane person; that she thereafter duly and regularly qualified as such guardian in the manner prescribed by law, and thereupon entered on the discharge of her duties as such guardian, and ever since said time has been, and now is, the duly appointed, qualified and acting guardian of the estate of the hereinabove-named insane person.

### III.

That on or about the 31st day of October, 1917, defendant above named borrowed from the Farmers Bank of Fairbanks, the sum of [5] Three Thousand Dollars (\$3,000.00), and plaintiff, David H. Cascaden, and David Petree, signed a note then and there given by said George Weber to the Farmers Bank of Fairbanks, as joint makers with the defendant above named, but said money was for the sole use and benefit of the defendant above named.

### IV.

That at the time of the borrowing of said money, defendant and David Petree and plaintiff, David H. Cascaden, made, executed and delivered to the Farmers Bank of Fairbanks a certain promissory note in the words and figures as follows, to wit:

“\$3,000.00      Fairbanks, Alaska, Oct. 31st, 1917.

Six months after date, without grace, for value received, I promise to pay to the order of the

Farmers Bank of Fairbanks, at their office in Fairbanks, Alaska, the sum of Three Thousand and no/100 Dollars with interest thereon at the rate of One per cent per month from date hereof until paid; both principal and interest payable in lawful money of the United States. Interest to be paid monthly, and if not so paid the whole sum of both principal and interest shall become immediately due and Collectable at the option of the holder of this note. In the event suit is brought to collect this note, or any portion thereof, I promise to pay in addition to the costs and disbursements provided by statute, a reasonable amount for attorney's fee. For value received each and every party signing this note, either as endorser, surety, guarantor, or assignor, waives presentment, demand, protest, and notice of non-payment thereof and binds himself thereon as a principal.

(Signed) GEO. WEBER,  
DAVID PETREE,  
D. H. CASCADEN."

No. A—22

Due April 30th, 1918.

[Endorsements]:

"Nov.	Paid \$30.	Interest to Nov.	31—	17
Jan. 2, 1918,	paid \$30.	Interest to Dec.	31—	17
Feb. 1, 1918,	paid \$30.	Interest to Jan.	31—	18
Apr. 22, 1918,	paid \$30.	Interest to Feb.	28—	1918
Apr. 22, 1918,	paid \$30.	Interest to March	31—	1918
May 22, 1918,	paid \$60.	Interest to May	31—	1918"

V.

That thereafter and at the maturity of said note,

said George Weber failed and neglected to pay same, and plaintiff, David H. Cascaden, thereafter and on the 25th day of June, 1918, paid said principal sum of said note together with \$30.00 interest thereon. [6]

#### VI.

That said defendant has not paid said note to plaintiff herein, nor has he paid any part thereof, and the whole thereof is due, owing, and unpaid from defendant to plaintiff herein, together with interest on the amount paid by said plaintiff, David H. Cascaden, to wit, the sum of Three Thousand and Thirty Dollars (\$3,030.00), at the rate of one per cent per month from the 25th day of June, 1918.

#### VII.

That plaintiffs have been compelled to and have instituted this action to collect said note, and have become liable to their attorney for a reasonable attorney's fee, and plaintiffs allege that the sum of Six Hundred Dollars (\$600.00) would be a reasonable amount to be allowed said attorney for his services therein.

For a second and further cause of action against defendant and in favor of plaintiffs herein, plaintiffs allege as follows, to wit:

#### I.

That on or about the 26th day of August, 1921, David H. Cascaden was, by the Probate Court in and for the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, duly and regularly adjudged an insane person.

## II.

That thereafter and on or about the 6th day of September, 1921, Blanche Cascaden, plaintiff herein, was by the United States Commissioner and *ex-officio* Probate Judge in and for Fairbanks Precinct, Division and Territory aforesaid, duly and regularly appointed guardian of the estate of the said David H. Cascaden, an insane person; that she thereafter duly and regularly qualified as such guardian in the manner prescribed by law, and thereupon entered on the discharge of her duties as such guardian, and ever since said time has been, and now is, the duly appointed, qualified, [7] and acting guardian of the estate of the hereinabove named insane person.

## III.

That on or about the 25th day of June, 1918, David H. Cascaden loaned to George Weber, the sum of Five Hundred Dollars (\$500.00), and on or about said date, said defendant, for and in consideration of said loan, made, executed, and delivered to David H. Cascaden a certain promissory note in the words and figures as follows, to wit:

“\$500.00. Fairbanks, Alaska, June 25th, 1918.

Six months after date, without grace, for value received, I promise to pay to the order of David H. Cascaden at Fairbanks, Alaska, the sum of Five Hundred and no/100 Dollars with interest thereon at the rate of one per cent per month from date until paid; both principal and interest payable in lawful money of the United States. Interest to be paid monthly, and if not so paid the whole sum of

both principal and interest shall become immediately due and collectible at the option of the holder of this note. In the event suit is brought to collect this note, or any portion thereof, I promise to pay in addition to the costs and disbursements provided by statute, a reasonable amount for attorney's fee. For value received each and every party signing this note, either as endorser, surety, guarantor, or assignor, waives presentment, demand, protest, and notice of nonpayment thereof, and binds himself thereon as a principal.

(Signed) GEO. WEBER."

Due Dec. 25/18.

#### IV.

That defendant has not paid said note, or any part thereof, and the whole thereof, together with interest thereon at the rate of one per cent per month from June 25, 1918, is due, owing and unpaid from defendant to plaintiff.

#### V.

That plaintiffs have been compelled to and have instituted this suit to collect said note, and have become liable to their attorney for a reasonable attorney's fee, which plaintiffs allege to be the sum of \$150.00, for his services in this action. [8]

WHEREFORE: Plaintiffs pray judgment against defendant as follows, to wit:

1st. On the first cause of action above set forth, the principal sum of \$3,030.00, together with interest thereon at one per cent per month from the 25th day of June, 1918, together with an attorney's fee in the sum of \$600.00



2d. On their second cause of action for the principal sum of \$500.00, together with interest thereon at the rate of one per cent per month from June 25, 1918, together with an attorney's fee in the sum of \$150.00.

3d. For costs of suit.

JOHN A. CLARK,  
Attorney for Plaintiffs.

United States of America,  
Territory of Alaska,—ss.

Blanche Cascaden, being first duly sworn, according to law, on her oath deposes and says: I am the duly appointed, qualified, and acting guardian of the estate of David H. Cascaden, an insane person, and am one of the plaintiffs in the above-entitled action; I have read the foregoing complaint, know the contents thereof, and the matters and things therein set forth are true, as I verily believe.

BLANCHE CASCADEN.

Subscribed and sworn to before me this 23d day of May, A. D. 1922.

[Notarial Seal] JOHN A. CLARK,  
Notary Public in and for the Territory of Alaska.

My commission expires Apr. 24, 1926.

[Indorsed]: Filed May 31, 1922. Rob't W. Taylor, Clerk. By R. H. Geoghegan, Deputy. [9]

[Title of Court and Cause.]

**Amended Answer.**

Comes now the defendant above named and by leave of Court first had and obtained, files this his

amended answer to plaintiff's complaint on file herein and alleges and denies as follows:

I.

Answering paragraph 3 of said complaint, defendant denies that he individually borrowed from the Farmer's Bank of Fairbanks, on the third day of October, 1917, or at any other time or at all, the sum of Three Thousand Dollars for which a note was given signed by George Weber, David Petree and D. H. Cascaden, and denies that David Petree or David H. Cascaden or either of them signed said note as accommodation maker and denies that the money borrowed from said Farmer's Bank of Fairbanks was for the sole use and benefit or sole use or benefit of defendant.

II.

Answering paragraph 5 of said complaint, defendant admits that David H. Cascaden paid the promissory note set forth and described in Paragraph 4 of said complaint but denies that the same was paid at the maturity of said note or at any time prior to the third day of July, 1918, and denies that the sum of Thirty Dollars was the amount that was paid by David H. Cascaden as interest on said note and denies that any other sum than the sum of Thirty-three Dollars was paid by the said David H. Cascaden to the said [10] Farmer's Bank of Fairbanks as interest on said note.

III.

Answering paragraph 6 of said complaint, defendant denies that the said David H. Cascaden was not repaid the principal sum named in the

promissory note set forth and described in paragraph 4 of said complaint and denies that the said David H. Cascaden was not paid the amount of interest which he paid upon said note and denies that there is anything due, owing or unpaid from defendant to plaintiff upon said promissory note or interest.

#### IV.

Answering paragraph 7 of said complaint, defendant denies each and every allegation contained therein.

FOR A FURTHER, SECOND AND AFFIRMATIVE DEFENSE to the first cause of action set forth in plaintiff's complaint, defendant alleges:

#### I.

That the promissory note set forth and described in paragraph 4 thereof was, on the third day of July, 1918, paid in full by the Fairbanks Beverage Company by the execution of a promissory note in the sum of Three Thousand and Thirty-three Dollars (\$3033.00) and a mortgage securing the same by the said Fairbanks Beverage Company to David H. Cascaden, which said mortgage was filed for record in the office of the Recorder of the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, on the 6th day of July, 1918, and was recorded in Volume 8 of Real Estate Mortgages at page 546 et seq. thereof and indexed in Volume 3 of Chattel Mortgage Indexes as instrument number 51538, and the same was accepted as payment in full by D. H. Cascaden, and the said note described



in paragraph IV, of plaintiff's complaint delivered up and surrendered by said Cascaden.

FOR ANSWER TO THE SECOND AND FURTHER CAUSE of action [11] set forth in plaintiff's complaint, defendant alleges and denies as follows:

Admits that on or about the 25th day of June, 1918, defendant made, executed and delivered to David H. Cascaden the promissory note set forth and described in said Paragraph 3.

## II.

Answering paragraph 5 of said second cause of action defendant denies each and every allegation therein contained.

FOR A FURTHER, SECOND AND AFFIRMATIVE DEFENSE to the matters and things set forth in the second cause of action of plaintiff's complaint and as a counterclaim against said David H. Cascaden, defendant alleges:

## I.

That on the fifth day of February, 1918, the plaintiff herein David H. Cascaden, together with one D. Petree, for a valuable consideration, made, executed and delivered their promissory note in writing to defendant, which said promissory note is in the words and figures following, to wit:

"\$2000.00 Fairbanks, Alaska, February 5th, 1918.

On or before July 1st, 1918, after date, without grace, for value received, I promise to pay to the order of George Weber at the office of St. George & Cathcart in Fairbanks, Alaska, the sum of Two Thousand and 00/100 Dollars with interest thereon

at the rate of one per cent per month from date hereof until paid; both principal and interest payable in lawful money of the United States. Interest to be paid at maturity and if not so paid the whole sum of both principal and interest shall become immediately due and collectible at the option of the holder of this note. In the event suit is brought to collect this note, or any portion thereof, I promise to pay in addition to the costs and disbursements provided by statute, a reasonable amount for attorneys' fees. For value received each and every party signing this note, either as endorser, surety, guarantor or assignor, waives presentment, demand, protest and notice of nonpayment thereof and binds himself thereon as a principal.

D. PETREE.

D. H. CASCADEN."

Due July 1st, 1918.

## II.

That no part of said sum of Two Thousand Dollars has [12] been paid by plaintiff D. H. Cascaden or by D. Petree to defendant and that no part of the interest due thereon has been paid by said plaintiff David H. Cascaden or by said D. Petree to defendant and that the whole sum of Two Thousand Dollars, together with interest thereon at the rate of one per cent per month from the fifth day of February, 1918, is now due, owing and unpaid from plaintiff David H. Cascaden to this defendant.

## III.

That defendant has been compelled to and has

employed an attorney to defend this action and to collect said promissory note of Two Thousand Dollars with interest, executed by David H. Cascaden and D. Petree and has become liable to such attorney for a reasonable attorney's fee herein and that the sum of Three Hundred and Fifty Dollars (\$350.00) is a reasonable attorney's fee herein.

WHEREFORE defendant prays judgment:

1. That plaintiff take nothing herein;
2. That defendant have judgment against plaintiff David H. Cascaden for the sum of Fifteen Hundred Dollars principal with interest on \$2000.00 at the rate of one per cent per month from the 5th day of February, 1918, to the 25th day of June, 1918, together with interest at the rate of one per cent per month on \$1500.00 from the 25th day of June, 1918.
3. For the sum of \$350.00 attorney's fees.
4. For costs and disbursements herein expended.

R. F. ROTH,

Attorney for Defendant. [13]

United States of America,  
Territory of Alaska,—ss.

George Weber being first duly sworn, deposes and says:

That he is the defendant named in the foregoing action; that he has read the foregoing answer and counterclaim; knows the contents thereof and that the same is true as he verily believes.

GEO. WEBER.

Subscribed and sworn to before me this 31st day of March, 1923.

[Notarial Seal]

R. F. ROTH,

Notary Public in and for Alaska.

My commission expires Nov. 14, 1925.

Service of the foregoing answer and counterclaim is hereby admitted this 19th day of July, 1922, it being understood and agreed that the foregoing answer and counterclaim may be filed without verification but that the same is to be verified according to law before trial.

JOHN A. CLARK,

Attorney for Plaintiffs.

[Endorsed]: Filed Jul. 19, 1922. Rob't W. Taylor, Clerk. By Frank Bishoprick, Deputy. [14]

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[Title of Court and Cause.]

**Amended Reply.**

Come now the plaintiffs above named and file this their amended reply to the so-called affirmative defenses set forth in defendant's amended answer, as amended by interlineation, and admit, deny, and allege as follows, to wit:

I.

For reply to the so-called further, second, and affirmative defense to the first cause of action, as found on page 2 of defendant's amended answer:

(1) Plaintiff admits that, on or about the 3d day of July, 1918, the Fairbanks Beverage Company executed and delivered to plaintiff David H.

Cascaden a promissory note in the sum of \$3,-033.00 and a mortgage securing the same, which mortgage was filed as alleged in said so-called further, second, and affirmative defense.

(2) Deny that said mortgage was accepted as payment in full of said note described in the complaint, or as a payment thereon.

(3) Deny that said promissory note, sued on by plaintiffs and described in plaintiffs' complaint, paragraph 4, was delivered up and surrendered by said Cascaden. [15]

(4) Deny that the said note and mortgage were accepted in full payment, or payment at all, of said indebtedness described in plaintiffs' complaint, or that it was accepted otherwise than as security for the amount due to said David H. Cascaden, and plaintiffs deny that said note, or any part thereof, has ever been paid.

## II.

For a further affirmative reply to the so-called further, second, and affirmative defense to plaintiffs' first cause of action, plaintiffs allege:

(1) That said mortgage, described in said so-called second affirmative defense, was a second mortgage on said property situate in Fairbanks, and that said mortgage has never been paid, and on a foreclosure of the first mortgage on the property described in said mortgage, given by the Fairbanks Beverage Company to David H. Cascaden for \$3,033.00, said property did not sell for sufficient to pay the first mortgage, and the second mortgage remains wholly unpaid.



## III.

For reply to the so-called further, second, and affirmative defense to the matters and things set forth in the second cause of action in plaintiffs' complaint, and as a counterclaim against David H. Cascaden, plaintiffs admit, deny, and allege as follows, to wit:

(1) Deny the allegations of paragraph 1 of said so-called further, second, and affirmative defense.

(2) Replying to paragraph 2 thereof, plaintiffs admit that no part of said promissory note, or interest, has been paid, but deny each and every other matter and thing therein contained.

(3) Replying to paragraph 3 thereof, plaintiffs deny each [16] and every matter and thing therein contained.

## IV.

For a further affirmative reply to said so-called further, second, and affirmative defense to plaintiffs' second cause of action, plaintiff alleges as follows, to wit:

(1) That the promissory note described in paragraph 1 of said so-called second affirmative defense, as set forth in paragraph 3 of the amended answer was, at the time of the making thereof, and ever since has been, without consideration, and that neither the plaintiff David H. Cascaden nor David Petree was or is liable to defendant in any sum whatsoever by reason of the making of said note.

## V.

For a further and second affirmative reply to the matters and things set forth in said further, second,

and affirmative defense to plaintiffs' second cause of action, plaintiffs allege as follows, to wit:

(1) That, prior to the 5th day of February, 1918, David H. Cascaden, George Weber, and David Petree had purchased from one Frank Allberg certain property in the town of Fairbanks, Alaska, and the purchasers paid on account of the purchase price the sum of approximately \$6,000.00, and there remained due to said Allberg the sum of approximately \$3,000.00.

(2) That George Weber, defendant in said action, fearing that he might be compelled to pay the balance of the said purchase price of said property to said Allberg in the absence of David H. Cascaden and David Petree, and as a protection in the event that he should be compelled to make such payment, procured from said David H. Cascaden and David Petree the promissory note [17] described in paragraph three of defendant's answer, which said promissory note was to be paid by said David H. Cascaden and David Petree to said Weber, in the event that Weber was compelled to pay to said Allberg the \$3,000.00 balance of the purchase price on the property purchased from said Allberg and described above, but not otherwise. That said note was intended to reimburse said Weber in the event he paid the proportion of the balance of the purchase price that was properly payable by said Cascaden and said Petree.

(4) That said Weber never paid to said Allberg the balance of said purchase price of said property, and the consideration for said note failed, and said

note is without consideration and is void, and plaintiff herein David H. Cascaden is not now, and never has been, liable for the payment of any part or portion thereof.

WHEREFORE, plaintiffs pray that defendant take nothing by his so-called affirmative defense, and that plaintiffs have judgment as prayed for in their complaint on file herein.

JOHN A. CLARK,  
Attorney for Plaintiffs.

United States of America,  
Territory of Alaska,—ss.

Blanche Cascaden being first duly sworn according to law, on oath deposes and says:

As guardian of the estate of David H. Cascaden, an insane person I am one of the plaintiffs named in the above-entitled action; I have read the foregoing amended reply, know the contents thereof, and verily believe it to be true.

BLANCHE CASCADEN.

Subscribed and sworn to before me on this the 4th day of February, A. D. one thousand nine hundred twenty-three.

[Seal] JOHN A. CLARK,  
Notary Public in and for the Territory of Alaska.

My commission expires 24 April, 1926. [18]

Due service hereof admitted this 7 February, 1923.

R. F. ROTH,  
Attorney for Defendant.



[Indorsed]: Filed Feb. 7, 1923. Rob't W. Taylor, Clerk. By Frank O'Farrell, Deputy. [19]

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[Title of Court and Cause.]

**Order Extending Time to and Including May 20, 1923, to File Bill of Exceptions.**

This matter coming on for hearing on the application of the plaintiffs above named for an extension of time within which to prepare, serve, and present to this Court for settlement their proposed bill of exceptions in the above-entitled cause, and it appearing to this Court that the time allowed by law is not sufficient to enable plaintiffs to have the record in said cause transcribed and to prepare and serve their said proposed bill of exceptions, and the Court being duly advised in the premises;

Now, therefore, it is ordered, that said plaintiffs be, and they are, hereby given and granted until and including the 20th day of May, A. D. one thousand nine hundred twenty-three, within which time to prepare, serve, and present to this Court for settlement their proposed bill of exceptions in the above-entitled cause.

Done at Fairbanks, Alaska, on this, the 27th day of April, A. D. one thousand nine hundred twenty-three.

CECIL H. CLEGG,  
District Judge.

Entered in Court Journal No. 15, page 728.

[Endorsed]: Filed Apr. 27, 1923. Rob't W. Taylor, Clerk. By Frank O'Farrell, Deputy.  
[20]

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[Title of Court and Cause.]

### **Bill of Exceptions.**

BE IT REMEMBERED that heretofore and on, to wit, March 31, 1923, at the hour of 10:00 o'clock A. M., the above-entitled cause came regularly on for trial in the above court, and before the Honorable Cecil H. Clegg, the Judge of said court, sitting with a jury;

The plaintiff Blanche Cascaden appearing in person and by John A. Clark, Esq., her attorney and counsel;

The defendant appearing in person and by R. F. Roth, Esq., his attorney and counsel;

Whereupon the following proceedings were had and done, to wit: [21]

A jury was duly empaneled and sworn, and counsel for plaintiffs and defendant respectively made their opening statements to the jury.

### **Testimony of Mrs. Blanche Cascaden, for Plaintiffs.**

MRS. BLANCHE CASCADEN, 'one of the plaintiffs, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CLARK.)

Q. Your name is Blanche Cascaden?

(Testimony of Mrs. Blanche Cascaden.)

A. Yes, sir.

Q. You are the guardian of the estate of David H. Cascaden, an insane person?     A. Yes, sir.

Q. Mrs. Cascaden, I show you this instrument and ask you if that is the promissory note that is set forth in the first cause of action in your complaint?     A. Yes, sir; I believe it is.

Mr. CLARK.—We offer this in evidence and ask to have it marked Plaintiffs' Exhibit "A."

Mr. ROTH.—We have no objection.

The COURT.—It may be admitted.

Promissory note referred to received in evidence, marked Plaintiffs' Exhibit "A" and made a part of the record herein.

Q. I show you this second paper and ask you if that is the promissory note signed by George Weber described in your second cause of action? [22]

A. Yes, sir; I believe it is.

Mr. CLARK.—We offer this in evidence and ask to have it marked Plaintiffs' Exhibit "B."

Mr. ROTH.—We have no objection.

The COURT.—Very well, it may be so marked.

Promissory note referred to received in evidence, marked Plaintiffs' Exhibit "B" and made a part of the record herein.

Mr. CLARK.—That is all.

Mr. ROTH.—No cross-examination.

(Witness excused.)

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**Testimony of George Weber, for Plaintiffs.**

GEORGE WEBER, the defendant, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

**Direct Examination.**

(By Mr. CLARK.)

Q. Your name is George Weber?

A. Yes, sir.

Q. You are the defendant in the action?

A. I believe so.

Q. I show you this instrument marked Plaintiffs' Exhibit "A," being a promissory note for three thousand dollars, dated October 31, 1917, due six months after date, signed by George Weber, David Petree and [23] D. H. Cascaden. A. Yes, sir.

Q. You have seen that note before, have you?

A. I guess I have, if I signed it. That is my signature.

Q. Was any part of the money that was realized on that note for Dave Cascaden personally?

Mr. ROTH.—We object to that on the ground the same is irrelevant, incompetent and immaterial, not embraced within the issues in this case, because it is alleged that Petree and Cascaden both signed it as accommodation makers for Mr. Weber. Until the proper foundation is shown that this money was borrowed by George Weber personally, any other testimony is incompetent, irrelevant and immaterial. Under the pleadings here it must ap-

(Testimony of George Weber.)

pear first that George Weber borrowed this money for himself.

The COURT.—The question was, was any of this money for the personal benefit of Cascaden.

Mr. ROTH.—All right, I withdraw the objection, then.

Q. Was any of this money for the personal use of Mr. Cascaden? A. The original?

Q. Yes, the original loan?

A. Signed on October 31, 1917?

Q. Yes. A. No.

Mr. CLARK.—That is all. [24]

Cross-examination.

(By Mr. ROTH.)

Q. You were asked if any of the amount in there was for David H. Cascaden. State for whom it was.

Mr. CLARK.—Now we object, if the Court please, as not cross-examination. He can recall Mr. Weber as his own witness. We asked the one question, whether it was for David Cascaden, and he says it is not.

Mr. ROTH.—Now I want to know who it is for.

The COURT.—Objection overruled.

Mr. CLARK.—We just note an exception.

The COURT.—Exception allowed.

Q. (Continuing.) So that you won't be mistaken, there is the note we are talking about. Plaintiffs' Exhibit "A" (handing same to witness).

A. Well, the Beverage Company was organized then—

(Testimony of George Weber.)

The COURT.—Take it easy and don't talk so fast.

Q. All I am asking you, George, is who borrowed that money—for whom was that money borrowed?

A. Originally Petree and myself borrowed it from the bank. This was the substitute note.

Q. I am not asking you about that. It was you and Petree that borrowed the money?

A. Yes, sir.

Q. And Cascaden was not in on it at all?

A. Not in the beginning.

Q. Did Cascaden have anything to do with it at that time? A. No, sir.

Q. At the time that you borrowed it did Cascaden sign it? [25] A. No, sir.

Mr. ROTH.—That is all.

(Witness excused.)

Mr. CLARK.—Plaintiffs rest.

(Plaintiffs rest their case in chief.)

Mr. ROTH.—If the Court please, at this time the defendant George Weber moves for a nonsuit as against the first cause of action set forth in this complaint for the reason that the same does not prove the allegations of the complaint with reference to that cause of action and that there is an entire failure of proof on that cause of action.

The COURT.—The motion will be denied.

Mr. ROTH.—We desire an exception.

The COURT.—Exception allowed.

\* \* \* \* \*



**Testimony of George Weber, in His Own Behalf.**

GEORGE WEBER, the *plaintiff*, called as a witness on his own behalf, having been previously sworn, testified as follows:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Weber, I hand you a promissory note which is marked Plaintiffs' Exhibit "A." I will ask you to state whether or not the sum named in that promissory note, or the amount borrowed from the Farmers Bank as set forth in [26] that note, was for your personal use? A. No, sir.

Q. I will ask you to state whether any part of it was for your personal use.

A. Well, part of it was, half of it was.

Q. For your personal use?

A. No, no, by the bottling works.

Q. I understand, but for your own personal use?

A. No.

Mr. CLARK.—What do you mean by personal use?

A. (Continuing.) It was for the bottling works.

Q. That is what you have alleged in your complaint here. Was it for your personal benefit?

A. It was for the bottling works.

Q. I understand, but your personal benefit as segregated from Dave Petree?

A. I don't understand you, Mr. Roth. We bought the bottling works together.

Q. Who? A. Mr. Petree and myself.

(Testimony of George Weber.)

Q. And this was for payment on that?

A. On that; yes, sir.

Q. Well, it wasn't for any separate business of your own?     A. No, sir.

Q. It was on a partnership between you and Petree?     A. Yes, sir.

Mr. CLARK.—We object to putting the words into the witness' mouth.

Mr. ROTH.—He already stated that.

Mr. CLARK.—He did not. You are making a partnership [27] proposition out of it.

The WITNESS.—That is what it was, Mr. Clark.

The COURT.—Already answered.

Q. Who signed that note originally?

A. Mr. Petree and myself.

Q. When, on the day that it bore date?

A. On October 31st.

Q. And when did David H. Cascaden sign it?

A. Well, when the note was due we couldn't pay it—

Q. (Interrupting.) Who couldn't pay it?

A. Mr. Petree and myself couldn't pay it to the bank, and Mr. Petree induced Mr. Cascaden to sign it, and the bank was satisfied with it.

Q. What did the bank agree to do if Mr. Cascaden signed it?     A. It was for the bottling works.

Q. When Cascaden signed the note—what did the bank agree to do if Cascaden would sign it, if anything?

A. Extend the note again until it could be paid.

Q. Was there any time mentioned?



(Testimony of George Weber.)

A. Well, sixty days.

Q. Sixty days?

A. Yes, sir—April, May and June—yes, sixty days.

Q. When you borrowed that money originally did you secure the note?

A. With a mortgage, yes, sir, to the bottling works down below and what we had bought besides, Mr. Petree and myself.

Q. Mr. Petree and yourself?      A. Yes, sir.

Q. Was that mortgage recorded? [28]

A. Yes, sir.

Q. In the note that is copied into that mortgage that is recorded is David H. Cascaden's name attached to it?

Mr. CLARK.—Just one moment. We object as not the best evidence.

Mr. ROTH.—Well, I will follow that up.

Mr. CLARK.—Are you going to produce the mortgage?

Mr. ROTH.—I am going to produce the record of it; I haven't the mortgage.

Mr. CLARK.—Well, that is the best evidence, that shows.

Q. Now, after the sixty days expired, which would be the 30th day of June?

A. Of June, yes, sir.

Q. Just state what happened with reference to the note, state what occurred.

A. Mr. Cascaden came up to the bottling works one day and he said, "You will make out a note to

(Testimony of George Weber.)

me and a mortgage, I paid the note to the Farmers' Bank." Mr. St. George stopped him on the street and asked him about it, and he got sore about it and he paid it, and we transferred a mortgage on the bottling works to Mr. Cascaden then.

Q. You mean you made a new mortgage?

A. Yes, a new mortgage. The insurance also went all to Mr. Cascaden's name. And he also told me to withdraw all the business from the Farmers Bank and put it back in the First National Bank. He was sore at that outfit there.

Q. Now, how much was that new note made for?

A. \$3033.00.

Q. \$3033.00? [29] A. Yes, sir.

Q. What was the \$33.00 for?

A. For interest intervening from the time it was due and unpaid till the new note was made out.

Q. The amount of interest that was unpaid on it?

A. Unpaid on it.

Q. Unpaid? A. Yes, sir.

Q. Which was \$33.00? A. Yes, sir.

Q. I hand you a note here that has marked across the face of it "Filed in the District Court, Territory of Alaska, Fourth Division, April 18, 1922, Robert W. Taylor, Clerk, by Frank Bishoprick, Deputy," and has written in red ink "Exhibit 'C,' Blanche Cascaden as Guardian, Fairbanks Beverage Co'y, a corporation," and ask you to state if you know what that note is?

A. This is the note that was made out with the mortgage to Mr. Cascaden in lieu of that one he took up from the Farmers Bank.

(Testimony of George Weber.)

Q. That note, as I understand you, was made to Cascaden in lieu of this—

A. (Interrupting.) Of this one, yes, sir (indicating).

Q. Of this note which is Plaintiffs' Exhibit "A" in this case?

A. Yes, sir. At that time we were organized, the Beverage Company was organized.

The COURT.—That would be in payment of it, wouldn't it?

Q. That was in payment of this note? [30]

A. When the mortgage was foreclosed.

Q. Was that in payment of this note?

A. Yes, sir.

Mr. CLARK.—Just a moment. If the Court please, there hasn't been any testimony it was in payment of the note, it was merely this note was given to him. They haven't produced any evidence to show that it was accepted as payment of that note. We admit that note was for the same amount and was given at that time, but we do not concede that it was accepted as payment or cancellation of the old note, because the old note was never surrendered.

Q. What was this note given for?

A. For the same amount that Mr. Cascaden paid to the Farmers Bank.

Q. Was it given to pay Cascaden for this note?

A. Exactly.

Mr. CLARK.—We object, if the Court please.

(Testimony of George Weber.)

That is a leading and suggestive question; that is the point involved.

Mr. ROTH.—Of course, it shows on its face.

The COURT.—Overruled.

Q. Did you give Mr. Cascaden a mortgage?

A. Yes, sir.

Mr. ROTH.—Now, if the Court please, in this case instead of bringing up the record I will ask to introduce the complaint in this case No. 2560, which is a record of this court, with which papers this \$3033.00 note was filed that [31] I have just called the witness' attention to. I ask to have the complaint in that case received in evidence in this case.

The COURT.—Any objection?

Mr. CLARK.—I have no objection at all.

The COURT.—Very well, it may be admitted and a certified copy substituted.

Complaint in cause #2560 received in evidence, marked Defendant's Exhibit 1 and made a part of the record herein.

Mr. ROTH.—And I ask to have this note for \$3033.00, dated July 3, 1918, which is on file in case No. 2560, also received in evidence in this case.

Mr. CLARK.—No objection.

The COURT.—It may be admitted.

Note referred to received in evidence, marked Defendant's Exhibit 2 and made a part of the record herein.

Mr. ROTH.—I simply want to read the third cause of action to the jury, if the Court please.

(Testimony of George Weber.)

Mr. CLARK.—Better read the first, which shows the first mortgage and shows this was given as a second mortgage.

Mr. ROTH.—That is the only part I want to introduce. I want to prove that there was a mortgage taken, that's all, but whether the first, second or third, I am not interested in that at all.

(Reading third cause of action of Defendant's Exhibit 2 to the jury.)

If the Court please, I now offer in evidence the motion for default in case No. 2560 in this case.

Mr. CLARK.—No objection. [32]

The COURT.—It may be admitted.

Motion for default in cause #2560 received in evidence, marked Defendant's Exhibit 3 and made a part of the record herein.

Mr. ROTH.—I presume it will not be necessary to read this default to the jury. Might just as well, though.

Mr. CLARK.—To save all that I will admit that we secured a default against the Fairbanks Beverage Company, the default was entered, thereafter a judgment was entered, and that will save the reading of those papers.

Mr. ROTH.—You will stipulate, then, that the record in that case 2560 is introduced in this case without the necessity of reading the same?

Mr. CLARK.—Yes.

The COURT.—All right, the whole record. That will be Exhibit 4.

Mr. CLARK.—And either party can refer to such portions of the record as they see fit.

(Testimony of George Weber.)

Mr. ROTH.—By stipulation we will stipulate it is in the case now, it is in evidence in this case without a certified copy of it.

The COURT.—Very well.

Files in cause #2560 received in evidence, marked Defendant's Exhibit 4 and made a part of the record herein.

Q. Mr. Weber, when Mr. Cascaden paid that three thousand dollar note upon which \$3033.00 were due, including the interest, at that time had the Fairbanks Beverage Company been organized?

A. Yes, sir. [33]

Q. State whether or not David H. Cascaden was a member of the Fairbanks Beverage Company, a stockholder in it? A. Yes, sir.

Q. Was he a large stockholder, do you remember? What proportion of the stock did he own?

A. If I remember the proportion was like this—

Mr. CLARK.—One moment. I think that is not the best evidence. I think the stock books is the best evidence of what he owned at that time.

The COURT.—You may answer if you know. Objection overruled.

Q. What proportion of the stock?

A. About one-fifth of the stocks. Mr. Petree—I had one-fourth—no, I had one-sixth, Mr. Cascaden one-fifth, and the balance was to Mr. Petree, but most of it was mortgaged to Mr. Cascaden, Mr. Petree's stocks.

Q. Now, when the Fairbanks Beverage Company was organized state what it did with reference, if



(Testimony of George Weber.)

anything, to the indebtedness of the former Beverage Company? A. Well, Mr. Cascaden had—

Mr. CLARK.—(Interrupting.) Well, one moment, if the Court please. We object on the ground it is not the best evidence. If this is a corporation they certainly must have the books and records showing what they did, and his testimony is incompetent.

Mr. ROTH.—I withdraw the question. I just wanted to show the history of this. It isn't really material, so I will withdraw the question, if the Court please. [34]

Q. Mr. Weber, I hand you now a promissory note signed by D. Petree and D. H. Cascaden, dated February 5, 1918, payable to yourself. I will ask you to state what the indebtedness named in that note was for; explain that note.

A. Mr. Petree and myself bought the bottling works in the fall of 1917, and he shipped us some stuff in. In fact, we had a complete plant besides that one down there, besides buying that plant in the spring. We started buying that plant in the spring. We couldn't agree on the price, and so as not to be left we shipped our own plant in. We finally bought and we agreed on the price. We had two plants then. And afterwards the brewery closed down, and the business was carried on with Webber and Petree, and the brewery was dead, and we had not organized, and to keep the thing going we carried it on as Webber and Petree, and

(Testimony of George Weber.)

that was carried on that way until the 27th of April, 1918, when we organized.

Q. But how did that note come to be given?

A. I went outside—I left Fairbanks on the 6th of February.

Q. What year?      A. '18.

Q. 1918?

A. Yes, sir. I went to an institution in Milwaukee for brewers, who were scientific brewing companies. It was a short course on account of members all knowing their business, and they said they would teach all the methods of improving near-beer, and how to change a brewery plant, adapt it to the new methods we had to use in [35] order to keep it going, and they decided I go out and take that course, and incidentally I bought some stuff and looked around. And on the day before I left, why, they figured up how we stood about our transaction with Mr. Petree and myself about shipping in that stuff and buying the bottling works, and Mr. Petree gave me that note.

Q. But why did he give you the note?

A. Because he owed me money very likely.

Q. Owed you how much money?

A. That amount what it says for.

Q. You figured out—

Mr. CLARK.—(Interrupting.) Now,—

Q. (Interrupting.) Just state, now, in what amount he gave you that note for?

A. Well, the amount the note calls for.

(Testimony of George Weber.)

Q. I know, but how much did he owe you at that time personally when you figured up?

A. Well, what the note calls for. He wouldn't give me anything else or any less.

Q. And did Cascaden owe you anything at that time?     A. No, sir.

Q. How does his name come to be on there?

A. Mr. Petree induced him to sign it.

Q. And that is made payable six months after date?

A. Yes, sir. Because the day I left Mr. Petree wanted to see me down at the hotel here, because he wouldn't be up in the morning before I left, and when I came down there about 9:00 o'clock he said, "About that note I give you to-day, if I cannot settle it before I will [36] settle it when I organize." And I figured he would give me shares for it, but when he come to organize he had nothing to give away because he only held one share himself after all, he only owned one share.

Q. Then, as I understand, before you left you and Petree figured up the business between you?

A. Yes, sir.

Q. And this note was the evidence of how you and Petree stood at that time personally?

A. Yes, sir.

Q. Was any part of that note ever paid to you?

A. No.

Q. I show you another note for five hundred dollars, dated June 25, 1918, signed by George Weber, payable to David Cascaden.     A. Yes, sir.

.(Testimony of George Weber.)

Q. Explain that note.

A. When I came back from the outside I paid my own fare.

Q. Now go slow because the reporter can't get you.

A. I paid my own fare out and back. The firm gave me two hundred and fifty dollars tuition for that course out there I took. I was there two weeks, but I paid my own fare in and out. I looked up several places, and when I came back I was short of money. And Mr. Petree, when he didn't come through when we organized, I knew there was no use after that. By that time I realized—

Q. (Interrupting.) Snow, now.

A. (Continuing.) I realized how bad he was off financially, and I asked Mr. Cascaden if he could help me out, I had to pay my life insurance and other things, and I needed [37] some money, and Mr. Cascaden gave me the money and I gave him that note.

Q. How much money?      A. \$500.00.

Q. And how did you come to give him a note for it?

A. Well, he wouldn't accept it on this note here, on the other one I had from Mr. Petree, because he didn't owe it to me.

Q. I see.

A. He says, "Keep that separate, let it stand that way." And before Mr. Petree left I tried to get some money from him yet to pay this note, that

(Testimony of George Weber.)

is all I wanted to pay, but I know he didn't have anything.

Mr. ROTH.—If the Court please, we ask that this note for \$2,000.00 be received in evidence.

Mr. CLARK.—No objection.

The COURT.—It may be admitted.

Note referred to received in evidence, marked Defendant's Exhibit 5, and made a part of the record herein.

Mr. ROTH.—And also the note for \$500.00 that you sued on.

Mr. CLARK.—That is already in.

Q. That note for five hundred dollars that you gave to Cascaden, you didn't pay anything on that note? A. No.

Q. But in this suit on this note of two thousand dollars you give credit for that five hundred dollar note? A. Yes, sir.

Q. Full credit? A. Yes, sir. [38]

Q. Now you said that Cascaden—you talk very fast, Mr. Weber—when Cascaden signed that note, that two thousand dollar note, see? A. Yes.

Q. He didn't at the time he signed that owe you anything? A. No.

Q. Then why did he sign that note?

A. Well, to accommodate Mr. Petree, I suppose.

Q. Of course, you don't mean to say that he didn't owe you on that when he signed that note?

Mr. CLARK.—We object, if the Court please, as a conclusion of law.

The COURT.—I will overrule the objection.

(Testimony of George Weber.)

Mr. CLARK.—Note an exception.

The COURT.—Exception allowed.

Q. What did you mean to say a while ago when you said that Cascaden didn't owe you? Did you mean to say that he told you that he didn't owe you, or what?

A. In what reference, Mr. Roth, please?

Q. I asked you when you borrowed this five hundred dollars from Cascaden—

A. (Interrupting.) Yes.

Q. (Continuing.)—why you didn't credit it on that two thousand dollar note, or something to that effect.

A. Well, he said it was Mr. Petree's note, not his note.

Q. That Mr. Petree owed you the money?

A. Owed me the money, yes.

Q. And he wanted Petree to pay it?

A. Yes.

Q. But he was on there as surety at least? [39]

Mr. CLARK.—We object, if the Court please. That is for the jury to determine, how he was on there, and he is asking for a conclusion of the witness.

Q. Did you mean to say that Dave Cascaden didn't owe you on that note which he signed of yours?

Mr. CLARK.—We object, if the Court please, as having already been answered. He has explained the whole circumstance.

The COURT.—Overruled.



(Testimony of George Weber.)

Mr. CLARK.—Note an exception.

The COURT.—Exception allowed.

Q. Did you mean to say that Dave Cascaden didn't owe you that two thousand dollar note?

A. Well, after he signed it.

Q. Of course. After he signed it, then do you claim he owed you?

A. That is evidence of any note. If I go on a note I am responsible for it, as I understand it.

Q. In order to collect this note for two thousand dollars with interest that is due on it did you employ an attorney? A. Yes, I had to.

Mr. ROTH.—You may cross-examine the witness.

Mr. CLARK.—If the Court please, if it is agreeable to the Court I would ask the adjournment be taken until 2:30, as I am subpoenaed to appear at 1:30 in an insanity case.

The COURT.—We will take a recess until 3:00 o'clock.

(Whereupon an adjournment was taken until 3:00 o'clock P. M.) [40]

Afternoon Session.

Saturday, March 31, 1923, 3:00 P. M.

GEORGE WEBER, on the stand.

Cross-examination.

(By Mr. CLARK.)

Q. Mr. Weber, you and Mr. Petree bought the Tanana Bottling Works, didn't you?

A. Yes, sir.

Q. October 31, 1917? A. '17, yes.

(Testimony of George Weber.)

Q. How much did you pay for the bottling works?

A. Nine thousand dollars. That was the price.

Q. How much was paid in cash?

A. Three thousand.

Q. Who paid it? A. Mr. Petree and myself.

Q. How much did you put up?

A. I put up my share.

Q. How much was that? A. Fifteen hundred.

Q. You are sure that you put up the fifteen hundred at that time? A. Yes.

Q. That only accounted for three thousand. Now where was the rest of it, where did the rest of it come from?

A. Three thousand dollars borrowed from the Farmers Bank and three thousand we still owed.  
[41]

Q. Where is that note that you gave to Ahlberg for the remaining three thousand dollars?

A. That is in the possession of Mr. Roth, I believe.

Q. That has never been paid, has it? A. No.

Q. That is signed by you and Petree?

A. Yes.

Q. Then that three thousand dollars that was borrowed from the Farmers Bank was the second three thousand that was paid on account?

A. Yes.

Q. You went outside in the spring of 1918, didn't you? A. February 6th I left here.

Q. You had received some word from Ahlberg

(Testimony of George Weber.)

before that, hadn't you, about him wanting the balance of his money?

A. Not personally. That time St. George was agent and Cathcart were agent for Ahlberg.

Q. You expected to see Ahlberg when you went outside, didn't you?     A. Yes.

Q. You knew Ahlberg was going to try to collect the balance of the three thousand, didn't you?

A. Well, of course he very likely would.

Q. How much of the purchase price of the Tanana Bottling Works were you to pay?

A. Four thousand five hundred.

Q. And you paid fifteen hundred?     A. Yes.

Q. And that's all that you ever paid on account of it?     A. Yes. [42]

Q. Now isn't it a fact, Mr. Weber, that at the time you were going outside Mr. Petree gave you a note for two thousand dollars for fear you might be compelled to pay the three thousand dollars that was still owing to Ahlberg?

A. I understand that it was money Petree and I had dealings with before.

Q. What were your dealings before?

A. He shipped some stuff in from the outside for our new bottling works in case we shouldn't buy that other one there.

Q. Who paid for that stuff that was shipped in?

A. Petree and myself.

Q. How much did you pay?

A. I don't recollect.

Q. How much did Petree pay?

(Testimony of George Weber.)

A. I don't know.

Q. About how much was paid altogether?

A. I couldn't recollect anything about it, Mr. Clark.

Q. How did it figure out that Petree owed you just two thousand dollars?

A. That is what we figured up that time.

Q. Isn't it a fact, Mr. Weber, that note was given to you to protect you in the event that you had to pay to Ahlberg the balance of that three thousand dollars?

A. Not as I recollect it.

Q. Now isn't it possible that is what it was given for?     A. I don't think so.

Q. Didn't you tell Mrs. Cascaden that that is what it was given for? [43]

A. No, not as I recollect.

Q. Mr. Weber, you remember last spring, that is, in the spring and early summer of 1922, there was some litigation between yourself and the Cascaden estate?     A. Yes, sir.

Q. And you finally settled the litigation, it was finally settled? You remember that, don't you?

A. It was settled by foreclosure, yes.

Q. No, you remember the suit that you brought, Mrs. Cascaden settled it and gave you some syrups and other stuff that was up there?

A. That was William Bittner.

Q. It represented a part of your account, didn't it?     A. Of some wages we put in, yes.

(Testimony of George Weber.)

Q. You remember when that case was settled, don't you?   A. Yes.

Q. Do you remember a day or two after that was settled about having a talk with Mrs. Cascaden at the gate where she was living up at the Heilig house?   A. Oh yes, that is correct.

Q. Do you remember her at that time asking you how it happened that Dave Cascaden owed you any money? Do you remember her asking you that?   A. About this note, yes, that's correct.

Q. Did you not say to her at that time that "Dave Cascaden doesn't owe me anything"?

A. Well, originally it was Mr. Petree's note, yes.

Q. Well, didn't you tell her that Dave Cascaden didn't owe you anything, that Petree is the man who owed you the money? [44]

A. Originally, yes.

Q. And didn't you tell her at that time that when you were getting ready to go outside you were afraid that you might have to pay the Ahlberg note and that that note was given, this note for two thousand dollars was given to you to protect you against having to pay all of that three thousand dollar note?

A. Not the same words to the same effect, no, Mr. Clark.

Q. Didn't you tell her in effect that was what that note was given for?

A. No, I could have had protection perhaps if I had asked for it.

(Testimony of George Weber.)

Q. Did you not tell her that was given to you for protection? A. No.

Q. You are certain of that? A. Yes.

Q. In order to just refresh your memory so there won't be any question about what was said, isn't it a fact that when she asked you how it happened that you were contending that Dave Cascaden owed you money, did you not tell her at that time that you and Petree had purchased the Tanana Bottling Works from Ahlberg for nine thousand dollars?

A. Yes.

Q. That you and Petree had paid three thousand dollars, that three thousand dollars was paid by the note given to the Farmers Bank, which Dave Cascaden afterwards paid—

A. (Interrupting.) Yes.

Q. (Continuing.)—and that there was three thousand still [45] due? A. Yes.

Q. That in 1918, on February 6th, the note for two thousand dollars was given to you when you were going outside for protection in the event that you were compelled to pay Ahlberg the other three thousand dollars that you had given a note for?

A. Not in the same words, no.

Q. Well, wasn't it that meaning, didn't you convey that meaning to her?

A. No, I said I could have had protection if I had asked for it perhaps at that time.

Q. If you had asked for it? Why were you speaking about needing protection?

A. Well, I told Mrs. Cascaden there was still



(Testimony of George Weber.)

three thousand dollars to be paid, and the firm took that debt over and put it on the books, but they never issued any security for it, and it is up to me to pay that. The way we started to talk about it at that time, Mrs. Cascaden came across to my gate and said, "You know, Mr. Weber, Mr. Cascaden wanted me to deed your interest back to you after it is all settled and sold"—

Q. (Interrupting.) Yes.

A. (Continuing.)—and I said, "I couldn't compel you to and I wouldn't do it unless you want to do it yourself."

Q. Didn't she at that time ask you why you were claiming that Dave Cascaden owed you any money when, as a matter of fact, Dave Cascaden had been putting up money for the brewery, for the bottling works, and did you not, in response to her question, say to her that Dave Cascaden [46] didn't owe you anything, that it was Dave Petree that owed you the money? A. It was Petree's note, yes.

Q. Yes. Did she not ask you how it happened that that note was given, this two thousand dollar note was given, and did you not at that time tell her it was given you for protection against the Ahlberg claim?

A. I don't think I recollect that, not the same words. I say I could have had protection if I had asked for it some time, but the note is up to me to be paid now.

Q. But you can't say now how it happened that

(Testimony of George Weber.)

you and Petree figured out that he owed you two thousand dollars?

A. I didn't keep any track of my accounts. I had my head full of changing the business from one to the other, and I had full confidence in Mr. Petree and Mr. Cascaden personally and financially. That time I didn't know how Mr. Petree stood.

Q. And Mr. Petree had enough confidence, did he, in letting you just take the figures out of your head and saying "You owe me two thousand dollars," and he gave you that note?

A. It was Mr. Petree's, not mine.

Q. Mr. Petree gave you the note?      A. Yes.

Q. And did you have any papers or figures there to figure out how much he owed you?

A. I don't recollect that.

Q. And he just gave you a note?      A. Yes.

Q. Now Mr. Cascaden didn't owe any part of that note, did he? [47]

A. Not before he signed it, no.

Q. And you didn't ask Mr. Petree for Mr. Cascaden's signature?      A. I don't recollect that.

Q. You didn't ask Mr. Petree for any security for that note?

A. No, because I thought it would be settled when they reorganized.

Q. So Mr. Petree handed you, you say, a note for two thousand dollars?      A. Yes.

Q. And when you looked at the note it had Dave Cascaden's name on it?

A. I don't recollect that. I put the note in the

(Testimony of George Weber.)

bank with my other papers when I left, the day before I left.

Q. You didn't even know that Dave Cascaden's name was on the note?     A. I don't recollect that.

Q. He didn't owe you any money, Dave Cascaden didn't owe you any money at that time, did he?

A. Not before he signed the note, no.

Q. And then afterwards you borrowed five hundred dollars from him in June?     A. Yes, sir.

Q. And you gave him a note at that time?

A. Yes.

Q. Mr. Cascaden continued to advance money to the Beverage Company afterwards, didn't he?

A. Yes.

Q. Now, Mr. Weber, you stated in your direct examination that this \$3,033.00 that Mr. Cascaden paid to the bank, [48] that you gave him a mortgage for that?     A. Yes.

Q. That was a second mortgage on the Beverage Company property, wasn't it?     A. I believe so.

Q. Why was that made a second mortgage?

A. Because Mr. Cascaden held a mortgage on the brewery property as first mortgage, and the bottling works was a second mortgage.

Q. Isn't it a fact that he had no mortgage on any property of the Beverage Company up until that time?

A. That is more than I could tell, Mr. Clark.

Q. Isn't it a fact that both of those, the first and the second mortgage were made out the same day?

A. That may be, but Mr. Cascaden had that

(Testimony of George Weber.)

money coming for money advanced to the brewery before.

Q. Is it not a fact, Mr. Weber, that Mr. Cascaden, on that day, the day that those two mortgages were executed, advanced five thousand dollars to the Beverage Company?     A. That may be correct.

Q. Yes. And Mr. Cascaden had already paid this three thousand dollar note to the bank, he had already paid the Farmers Bank three thousand dollars, hadn't he?

A. Well, I couldn't tell exactly the dates, Mr. Clark, when the things were made out.

Q. Isn't it a fact that at your meeting on the 25th day of June, 1918, that Mr. Cascaden agreed to advance five thousand dollars to pay some outstanding claims?     A. Yes.

Q. And two mortgages were given, one to him for five [49] thousand dollars?     A. Yes.

Q. And a second mortgage—

A. (Interrupting.) Yes.

Q. (Continuing.) —for \$3033.00?     A. Yes.

Q. Yes. Did you ever ask Mr. Cascaden to surrender that note that he paid at the bank, that \$3033.00 note?

A. I did not. It was Mr. Petree's doings at the time.

Q. He never was asked to surrender that note?

A. I spoke to Mr. Petree about it, if he would ask Mr. Cascaden to do that, that's all.

Q. Isn't it a fact that that mortgage, that second

(Testimony of George Weber.)

mortgage, was simply given to Mr. Cascaden as security for that note?

Mr. ROTH.—We object to that, if the Court please, on the ground that the same is incompetent, irrelevant and immaterial and not the best evidence. The mortgage itself speaks for itself.

The COURT.—Overruled.

Q. Isn't it a fact that that second mortgage was given to Mr. Cascaden as additional security for the promissory note that he had paid at the Farmers Bank?

A. Well, it was given for that promissory note that he had paid to the Farmers Bank, yes.

Q. He never gave you any writing in which he said that he would release you from any liability on that note, did he?

A. Well, it was the firm's dealings, Mr. Clark, not individually. We had organized by that time.  
[50]

Q. When that note was given you hadn't organized, had you?

A. We organized on the 27th of April.

Q. Yes, and that note was given in the previous October?

A. That was Mr. Petree's and my own note, yes.

Q. Yes. Well, you never got any writing from Mr. Cascaden in which he said that he would accept the Beverage Company and release you and Petree from this note that he had paid at the Farmers Bank, did you?

(Testimony of George Weber.)

A. Not to my knowledge, and I thought it wouldn't be necessary.

Q. You never asked him for anything of that kind, did you?

A. No. Mr. Stevens did all that legal work at that time.

Q. Now, you know, of course, that Mr. Cascaden is in the asylum outside?

A. Yes. I am sorry for it.

Q. And you know that you are the only member of that Beverage Company that is here that knows anything about the transactions? A. Yes.

Q. Mr. Cascaden secured his interest in the Beverage Company by a transfer of stock from Dave Petree, didn't he?

A. I believe so; I am not sure.

Q. Just to refresh your memory, is it not a fact that Mr. Cascaden advanced considerable money for Mr. Petree in connection with the brewing company? A. Yes.

Q. And that Mr. Petree owed him over ten thousand dollars?

A. I don't know the amount, but it must have been that amount, something like that.

Q. Isn't it a fact that after the Beverage Company was [51] organized that Mr. Petree assigned some of his stock in the Beverage Company to Dave Cascaden in part payment of what he owed him on the old brewery company account?

A. Well, I know—as far as I know for what purpose I could not tell. It was between the two.



(Testimony of George Weber.)

Q. The original purchase of the Tanana Bottling Works and the original purchase of your other plant up here that you had, that was made by you and Petree together?

A. The original purchase of the bottling works, yes.

Q. And you and Petree then organized a corporation, and Mr. Cascaden's interest in that corporation you state was a one-fifth, I believe?

A. I believe so, yes.

Q. And he got that through Mr. Petree?

A. He got that through his interest in the brewery.

Q. And he was not supposed to put up any money into the Beverage Company?      A. No.

Mr. CLARK.—That is all.

Redirect Examination.

(By Mr. ROTH.)

Q. But that note for three thousand dollars that was signed by you and Petree to the Farmers Bank was afterwards, after it became due, signed by Cascaden?

A. It must have been, because it wasn't signed before on the original.

Q. Now, the note that you gave to Cascaden for \$3033.00, what was that note for?

Mr. CLARK.—We object as already having been gone [52] into on direct examination.

The COURT.—He may answer the question.

A. Mr. Cascaden took up the first original note

(Testimony of George Weber.)

in the bank, and we took then the second note from the firm and the mortgage also.

Q. What for?      A. For the first note.

Q. For the first note?      A. Yes.

Q. And that \$3033.00 note that he took is the same note that was sued upon in this court and has gone to judgment?

A. Yes, sir. There was only one \$3033.00 note all the way through, not two, only one, and that went on record here to show that.

Q. And Cascaden has already a judgment for that note?      A. So I understand.

Q. In this court?      A. So I understand.

Q. Not only for the note but for interest and attorney's fees, too?      A. Yes.

Q. And this note here that they sue on is for the exact amount that they have got judgment for now?

A. Yes, exactly, and I believe it is the same number, too, if I am right.

Mr. ROTH.—Yes, it is the same number. That is all. [53]

Recross-examination.

(By Mr. CLARK.)

Q. Mr. Weber, you also know, do you not, that that judgment that was secured against the Beverage Company on a three thousand dollar note wasn't paid? You know that has never been paid, don't you?

A. Well, it is paid, I understand, when it was foreclosed and sold.

(Testimony of George Weber.)

Q. Don't you know it didn't sell for enough to wipe out the first mortgage?

Mr. ROTH.—That is objected to, if the Court please, on the ground the same is incompetent, irrelevant and immaterial.

Mr. CLARK.—You have introduced the record yourself that shows all that.

A. It may be.

Mr. ROTH.—That is all right. I object to it on the ground it is incompetent, irrelevant and immaterial.

The COURT.—Is it on the records?

Mr. CLARK.—It is on the records.

The COURT.—Objection overruled.

A. That may be, Mr. Clark. I wasn't much of a lawyer. The record will show.

Mr. CLARK.—The record will show the judgment and the execution and the return of the execution.

Mr. ROTH.—That is all right.

Mr. CLARK.—That is all.

(Witness excused.) [54]

### **Testimony of M. R. Boyd, for Defendant.**

M. R. BOYD, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

#### **Direct Examination.**

(By Mr. ROTH.)

Q. What is your name?      A. M. R. Boyd.

Q. What official position do you occupy?

(Testimony of M. R. Boyd.)

A. Commissioner; United States Commissioner and *ex officio* Recorder.

Q. Fairbanks Precinct?

A. Fairbanks Precinct, Fourth Division.

Q. As such have you the recording records in your possession? A. Yes, sir.

Q. Have you Volume 8 of Real Mortgages here with you in the courtroom? A. I have, yes.

Q. Turn to page 473 of that volume and state if there is a mortgage recorded from George Weber and David Petree to the Farmers Bank?

A. Yes, sir; Number 5041, recorded November 1st, 1917.

Q. And is there any record there that shows it was released or paid?

A. Yes, sir.

Q. What is that?

A. There is a marginal release.

Q. What is the marginal release?

A. "The within mortgage is hereby acknowledged paid in full and discharged this 25th day of June, 1918. Farmers Bank, by H. E. St. George, President. Witness, [55] J. V. Creamer, Deputy Recorder."

Mr. ROTH.—If the Court please, I ask to have this mortgage introduced in evidence, read into the record, so that the Recorder may return the book.

Mr. CLARK.—Why not simply dictate a synopsis of what it is. If it is just the fact you want the mortgage, show the mortgage was recorded and the

(Testimony of M. R. Boyd.)

note was signed by Weber and Petree, and you wouldn't have to encumber the record.

Mr. ROTH.—Well, I want to show this is exactly the same note with two names on it that we have here.

Mr. CLARK.—Well, maybe we can stipulate to that. Let's compare the note and see if it is the same thing. There seems to be two differences. Now "George" is spelled out in full there and it is abbreviated here, and in the original here "October" is written out in full and it is abbreviated here. Now would a thing of that kind get by in the Recorder's office without being checked, do you suppose?

The WITNESS.—Well, I didn't know the recorder nor his deputy. I couldn't say.

Mr. ROTH.—The same number, A-22.

Mr. CLARK.—Yes. Well, I will stipulate the wording is the same, with the exception that "George" is spelled out in full and "October" is spelled out in full, while in the note it is abbreviated.

Mr. ROTH.—Do you stipulate it as the same note?

Mr. CLARK.—The wording is precisely the same with those two exceptions. Of course, I don't know. [56]

The COURT.—The payments on the back are the same.

Mr. CLARK.—That is the note we have introduced in evidence, if the Court please. The only

(Testimony of M. R. Boyd.)

question that I had in my mind is whether that was the same note referred to in this other mortgage given to the Farmers Bank on that same date. I presume it is, although evidently the comparison was a little bit off because there were abbreviations that were omitted. You see, that was in another mortgage.

Mr. ROTH.—I don't want any question left but what this is the same note, if the Court please. The only difference is that "D. H. Cascaden" is written on there as a maker, and I want to show, of course, the number is the same, the date is the same, the date of payment is the same. That is the only thing I am interested in. Of course, I don't want to encumber the record, but I don't want to leave any question on the proposition at all but that this very note that they have sued on in this action was for the exact amount, the same indebtedness that they already have sued and recovered a judgment on. That is the point. I don't want any question about that, and for that reason I want to introduce the record here.

The COURT.—You may introduce it. Nobody has made any objection to it, except Mr. Clark suggested he wanted to shorten it.

Mr. ROTH.—I did, too, and if he would stipulate that was the same note that would end it, but he [57] doesn't want to stipulate that.

Mr. CLARK.—Well, I don't know. It seems the wording is the same with the exception of those



(Testimony of M. R. Boyd.)

two differences. Reading the record won't help to clear up that point at all.

Mr. ROTH.—Well, I will ask the witness to just simply read the note.

Q. Is there a note in that mortgage that you have referred to as having been recorded of that date?

A. Yes, sir.

Q. Just please read that note.

A. (Witness reads as follows:)

“3000.00. Fairbanks, Alaska, October 31st, 1917.

Six months after date, without grace, for value received, I promise to pay to the order of the Farmers Bank of Fairbanks, at their office in Fairbanks, Alaska, the sum of Three Thousand Dollars, with interest thereon at the rate of one per cent from date hereof until paid; both principal and interest payable in lawful money of the United States—.”

Q. (Interrupting.) You say one per cent. Doesn't it say “one per cent per month”?

A. (Continuing.)—“One per cent per month from date hereof until paid; both principal and interest payable in lawful money of the United States. Interest to be paid monthly and if not so paid the whole sum of both principal and interest shall become immediately due and collectable at the option of the holder of this note. In the event suit is brought to collect this note, or any portion thereof, I promise to pay in addition to the [58] costs and disbursements provided by statute a reasonable

(Testimony of M. R. Boyd.)

amount for attorney's fee. For value received each and every party signing this note, either as endorser, surety, guarantor or assignor, waives presentment, demand, protest, notice of nonpayment thereof, and binds himself thereon as a principal.

No. A-22.

Due April 30th, 1918.

(Signed) GEORGE WEBER,  
DAVID PETREE."

Mr. ROTH.—That is all.

Cross-examination.

(By Mr. Clark.)

Q. Mr. Boyd, in this original note which I show you it says "Three Thousand & no/100." Is there anything of that kind in that note copied in the mortgage?

A. (Reading) "at their office in Fairbanks, Alaska, the sum of Three Thousand Dollars, with interest thereon at the rate of one per cent per month."

Q. There is nothing in there about "& no/100"?

A. No, sir.

Q. This note you have read out of this mortgage, the word "October" is spelled out in full, is it not?

A. Yes, sir.

Q. In this note which I show you, which is Plaintiffs' Exhibit "A," "October" is abbreviated to "Oct.," is it not?

A. Yes, sir.

(Testimony of M. R. Boyd.)

Q. In the note you have just read from the book the signature shows "George Weber," "George" is spelled out in full, is it not?

A. Yes, sir. [59]

Q. In the note which I show you "George" is abbreviated?

A. "G-e-o."

Q. Yes. Now, is it not a fact, Mr. Boyd, there are three discrepancies between the note as copied into the record here that you are reading from and this note that we are referring to, the first discrepancy in the "October," the abbreviation of "October" is not set forth, that the words "& no/100" is omitted, and George Weber's name is written out in full instead of being abbreviated?

A. Yes, sir.

Q. Those records are always compared, are they not?

A. Yes; should be. That is my practice now, to always compare them.

Q. There is nothing on here to show that it was compared, is there?

A. Possibly that checkmark (indicating) would indicate that it had been compared. In comparing, though, now, in reading "October" that would be something that might get away; so of the "George."

Q. Would that "& no/100" get away?

A. An error of that kind should not get away, but it would be very easy for the other to get away, but "& no/100" should not get away.

Mr. CLARK.—That is all.

(Testimony of M. R. Boyd.)

Redirect Examination.

(By Mr. ROTH.)

Q. But from a comparison of the note here, in all other respects with that, it is perfectly apparent, is it not, it was careless comparison. [60]

Mr. CLARK.—We object, if the Court please. It is not for this Recorder to say it is careless comparison. It is a question of fact for the jury as to whether or not it is the same note.

Mr. ROTH.—I will withdraw that question.

Q. You don't mean to say, Mr. Boyd, there are not errors in copying instruments that are not discovered in comparing them afterwards?

Mr. CLARK.—Object, as that is too broad and theoretical, and asking him about somebody before he was in office.

The COURT.—Well, he may answer.

A. Well, I will say this, now. In comparing, for instance, the recorder is reading her work here and you are holding copy on her. Now, if she read "George Weber" you might overlook calling her attention to the fact it was "Geo" Weber. Now, it should be read "G-e-o. Weber," but we all know George Weber, and if it was read "George Weber" to you, you might let it go by. She might have "George Weber" here and you have "G-e-o. Weber" and that get by. That same thing would hold true with "October." The correct reading of "October" would be "O-c-t.," but if she read it "October" it would go at "October," you see.

(Testimony of M. R. Boyd.)

Q. But sometimes people just simply make a mistake in reading, don't they?

A. Oh, I suppose they do, yes. I don't imagine that anyone is perfect.

Mr. ROTH.—That is all.

Mr. CLARK.—That is all, Mr. Boyd.

(Witness excused.) [61]

Mr. CLARK.—May I recall Mr. Weber for a little bit more cross-examination?

Mr. ROTH.—All right.

**Testimony of George Weber, for Plaintiffs (Recalled).**

GEORGE WEBER, the defendant, recalled by plaintiffs for further cross-examination, further testified as follows:

**Cross-examination (Resumed).**

(By Mr. CLARK.)

Q. Mr. Weber, where did you and Mr. Petree get the money that you made your first payment to the Tanana Bottling Works with?

A. I had some and I borrowed some.

Q. Isn't it possible you and Mr. Petree borrowed it from the Farmers Bank?

A. No, the record would show there. I did not.

Mr. CLARK.—That is all.

(Witness excused.)

**Testimony of Chas. L. Thompson, for Defendant.**

CHAS. L. THOMPSON, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ROTH.)

Q. Were you acquainted with David Petree during his life time? [62] A. I was.

Q. Do you remember when David Petree left here the last time? A. I do.

Q. I will ask you whether or not he left any business with you to take care of when he left?

A. Yes, he left some orders for collection on different people in the amount of approximately \$500.00.

Q. And what did he direct you to do with the proceeds?

A. Pay the money to Weber, George Weber.

Q. Did he say anything further in connection with that?

Mr. CLARK.—Oh, we submit, if the Court please, this is hearsay and not binding upon the plaintiffs in this action. We can't vouch for anything Mr. Petree may have told Mr. Thompson. It is not competent evidence.

The COURT.—Overruled.

Q. Just state what he said, everything that he said as you recollect in that regard.

A. He told me if I collected this money to pay it to George Weber, as he owed him some money.



(Testimony of E. H. Mack.)

Mr. ROTH.—You may cross-examine.

Mr. CLARK.—No examination.

(Witness excused.) [63]

**Testimony of E. H. Mack, for Defendant.**

E. H. MACK, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name?      A. E. H. Mack.

Q. Did you ever work for the Farmers Bank?

A. Yes, sir.

Q. I will ask you to state whether or not you have in your possession any of the receipts or documents or anything showing the payments of any bills?      A. I have some credit slips, yes, sir.

Q. I will ask you to state whether or not you have a credit slip there with reference to an indebtedness that was owing the bank, Farmers Bank, by David Petree and George Weber?

A. I have a credit slip with the loan number, the note number, but I don't know what it is.

Q. Have you a note slip?      A. Yes, sir.

Q. With reference to No. A-22?      A. I have.

Q. May I see it, please? (Witness produces papers.) How do you come to have this in your possession?

A. They were in the office, but they were not taken away.

(Testimony of E. H. Mack.)

Q. Will you detach that one, please? (Witness detaches a paper from a bunch of papers.)

Mr. CLARK.—That is St. George's writing all right.

Mr. ROTH.—We desire to introduce this in evidence. [64]

Mr. CLARK.—No objection.

Note slip referred to received in evidence marked Defendant's Exhibit 6 and made a part of the record herein.

(Defendant's Exhibit 6 read to the jury.)

Q. How long did you work in that bank, Mr. Mack? A. About two years.

Q. What capacity? A. Accountant.

Q. Did they number their notes?

A. They did.

Q. And this was a regular number of the bank?

A. Yes, sir.

Mr. ROTH.—You may cross-examine.

Mr. CLARK.—No examination.

(Witness excused.)

### **Testimony of George Weber, in His Own Behalf (Recalled).**

GEORGE WEBER, the defendant, recalled as a witness on his own behalf, further testified as follows:

#### **Direct Examination.**

(By Mr. ROTH.)

Q. What position did you occupy, what office

(Testimony of George Weber.)

did you hold, if any, in the Fairbanks Beverage Company?    A. Secretary, and treasurer also.

Q. As such have you the books in your possession of the Beverage Company? [65]    A. I have.

Q. I will ask you to turn to the minutes of June 25, 1918, and state whether or not there is any entry there with reference to that note that you and Mr. Petree had given to the Farmers Bank for the sum of three thousand dollars?    A. Yes, sir.

Q. Who was present at that meeting?

A. David Petree, David H. Cascaden and George Weber.

Q. What office did David Petree hold in the company?    A. He was president.

Q. What office did David H. Cascaden hold?

A. Vice-president.

Q. And Mr. Cascaden was present, was he?

A. Yes, he was present.

Q. Was there a resolution introduced at that time?    A. Yes, sir.

Q. And was it adopted?    A. Yes, sir.

Q. Who voted for the resolution?

A. The three aforesaid names, partners.

Q. David H. Cascaden?    A. Yes, sir.

Q. David Petree?    A. Yes, sir.

Q. And yourself?    A. Yes, sir.

Q. Was that resolution typewritten?

A. Yes, sir.

Q. Was it signed?    A. Yes, sir. [66]

Q. Who prepared this resolution?

A. I believe Mr. Stevens.

(Testimony of George Weber.)

Q. Morton E. Stevens?      A. Yes, sir.

Q. Attorney at law?      A. Yes, sir.

Q. Is this the original resolution? (Indicating)

A. Yes, sir.

Mr. ROTH.—I offer this in evidence, if the Court please.

Mr. CLARK.—We object, if the Court please, as it is not a resolution at all, simply purports to be the minutes of the Board of Directors of that day.

Mr. ROTH.—Then we will call it minutes.

Q. They are signed by David H. Cascaden, David Petree and yourself?      A. Yes, sir.

Mr. ROTH.—And it refers to the identical matter in controversy here, if the Court please, and we ask to introduce this in evidence.

Mr. CLARK.—If they call it “minutes” we don’t object.

The COURT.—Very well, it may be admitted.

Minutes referred to received in evidence, marked Defendant’s Exhibit 7 and made a part of the record herein.

Mr. ROTH.—That is all.

Mr. CLARK.—That is all.

(Witness excused.)

Mr. ROTH.—Defendant rests.

(Defendant rests his case.) [67]

**Testimony of Blanche Cascaden, for Plaintiffs  
(Recalled in Rebuttal).**

BLANCHE CASCADEN, recalled in rebuttal as a witness on behalf of the Plaintiffs, further testified as follows:

Direct Examination.

(By Mr. CLARK.)

Q. Mrs. Cascaden, did you have a conversation with Mr. Weber some time last spring at the gate of the Heilig residence, where you were then living?

A. Yes, sir.

Q. And was it after a suit that he had brought involving certain syrups and other things up there had been settled?

A. Yes, sir; right after I released them.

Q. Who was present at the meeting, if you remember, just yourself and—

A. (Interrupting.) Just myself and Mr. Weber. The children were there at the door, but not near.

Q. What, if anything, did you ask Mr. Weber at that time in regard to any indebtedness that he claimed to be due from Dave Cascaden?

A. What was the first part of that?

Q. What question did you ask of him?

A. Oh, I asked Mr. Weber how it came that Dave owed him money, and he says, "Well, Dave didn't owe me"—he says, "He don't owe me anything." "Well," I says, "you are suing him for some money." "Well," he said, "that is"—"well," he says, "Dave don't owe me anything," he says

(Testimony of Blanche Cascaden.)

"That is something to do with Petree," he says. "We promised to pay"—I think he said Ahlberg, they owed him something like three thousand dollars and [68] something, and he said, "We agreed to pay that." He says, "The firm has nothing to show for that, but," he said, "we don't—Dave doesn't owe me anything, but," he says, "I have agreed to pay that, and," he says, "it is Petree's note." That's about the words he said. I think I wrote it down, Mr. Clark, and gave it to you right after.

Q. How long after you had this conversation did you write it down?

A. About five minutes from the time he left. I went in the house and wrote it down so I wouldn't forget it.

Q. Had you, at my request, seen him to endeavor to find out what the basis of his claim was?

A. No, sir. No, at your request, Mr. Clark, exactly.

Q. Well, I had discussed with you before that how it came about Dave was on any note to Weber?

A. Yes, you asked me that.

Q. Was it after that you had this talk with him?

A. Yes, sir.

Q. And then you made a memorandum of this conversation?

A. Yes, and I brought it right up to your office.

Q. I will ask you to look at that memorandum, and ask you if that is the memorandum that you



(Testimony of Blanche Cascaden.)

made a few minutes after your talk with Mr. Weber?     A. Yes, sir.

Q. What does that say?

A. Well, I have "Three thousand, Weber and Pe-tree; three thousand paid afterwards Dave Cascaden; three thousand still due Ahlberg. Two thousand was to secure George in 1918, February 6th, when he left for outside, against balance of three thousand note due Ahlberg. Firm was to [69] pay Ahlberg three thousand, but has nothing to show."

Q. Directing your attention to this part of the memorandum that says "two thousand was to secure George in 1918, February 6th, when left for the outside against balance of three thousand dollar note due Ahlberg." Did Mr. Weber make that statement to you at that time?

A. He did, Mr. Clark.

Q. And you were referring to that two thousand dollar note that he has set up in his answer in this case?     A. Yes, sir; that is the note.

Mr. CLARK.—We ask to introduce this memorandum in evidence.

Mr. ROTH.—We object to the introduction of that in evidence.

Mr. CLARK.—Well, all right. It doesn't make any difference. We withdraw it. That is all.

Cross-examination.

(By Mr. ROTH.)

Q. Did he tell you at that time that David H.

(Testimony of Blanche Cascaden.)

Cascaden had signed this Ahlberg note, or was on this Ahlberg note? A. No, he did not.

Q. Did he explain to you how it came about that David H. Cascaden signed a note to secure him against loss on a note that he was not responsible on at all?

A. That who wasn't responsible on, Mr. Roth?

Q. Did I understand that David H. Cascaden signed that Ahlberg note?

A. No, sir, I didn't know anything about that at all.

Q. Well, you mean to say that George Weber told you at that [70] time that David H. Cascaden signed a note to secure him against loss on the Ahlberg note?

A. I didn't understand Mr. Weber to say that at all. He said that Dave did not owe him anything, but that he had this note against Petree, was to secure him on the loss of Ahlberg, on the balance of three thousand that was due Ahlberg.

Q. Did he explain to you how David H. Cascaden happened to sign that two-thousand dollar note?

A. Well, just as I say there in my memorandum.

Q. He made no other explanation at all?

A. Not that I know of, only what I wrote down there.

Q. Well, did you understand from what he said that Cascaden was responsible on that Ahlberg note? A. No.

Q. You didn't understand it?

(Testimony of Blanche Cascaden.)

A. No, sir. Because I asked Mr. Weber how it come that Dave owed him or Mr. Petree any money. I knew that Mr. Petree and Weber owed in the neighborhood of twenty thousand dollars, and I couldn't see how he come to owe them anything.

Q. Well, you say Petree and Dave. It was the Beverage Company that owed him?

A. I said Mr. Weber and Mr. Petree owed Mr. Cascaden in the neighborhood of twenty thousand dollars.

Q. How do you figure that out?

A. That is very easy. Mr. Petree owed him alone pretty near nine thousand dollars, and the balance was owed by the beverage and the brewery company, covered by a mortgage, part of it, and then there is two thousand that isn't [71] covered at all, that is still due.

Q. Yes, but it was the beverage or brewing company that owed him?

A. Well, I said Mr. Weber and Mr. Petree owed him in the neighborhood of twenty thousand dollars.

Q. How do you say now that Mr. Weber owed him anything? It was the company that owed him, wasn't it?

A. Well, it was between the two of them, was it not?

Q. Well, it was the corporation that owed him, wasn't it?

A. It is the corporation that is suing him, I guess.

Q. You are saying now that George Weber and

(Testimony of Blanche Cascaden.)

Petree owed him in the neighborhood of twenty thousand dollars?

A. Yes, sir; I do, and still say so.

Q. And you still say so?

A. Yes, sir; except this that has been settled through a mortgage.

Q. Does he owe him anything except through the corporations that he was a member of?

A. Well, I cannot say—I don't know just exactly that. I know the five hundred dollars that Mr. Weber borrowed from Dave didn't seem to have anything to do with the corporation, and the eight thousand and some odd dollars that Mr. Petree had that Dave paid notes for didn't have anything to do with the corporation.

Q. What has George Weber got to do with that?

A. You are just asking me about—

Q. (Interrupting.) You volunteered a statement now. I don't understand it. Where does George Weber personally, outside of this five hundred dollar note, owe David H. Cascaden anything? Now, you made the statement here under [72] oath. Now explain to me—that's all I want to know—where he owes it?

A. Well, I imagine that Mr. Weber and Mr. Petree were part of the corporation. I don't know where else—who else you could blame for it.

Q. Well, Cascaden was—

A. (Interrupting.) He was putting up the money.

Q. He was a member of the corporation?

A. Yes, and he was putting up the money, too.

(Testimony of Blanche Cascaden.)

Q. How much of an interest in the corporation did he have?     A. I don't know.

Q. Then Dave Cascaden owed it, too, according to the—

A. (Interrupting.) He owed an interest, yes, sir.

Q. He owed his—the way you are reasoning the thing out, he also owed this same indebtedness. If the corporation owed him and he is a member of the corporation, why, then he also owed it, didn't he?

A. Well, part of it was owed before he became a member of the corporation.

Q. Well, that may be true, but what I want to get at is this: Outside of this five hundred dollar note there is nothing personal that George Weber owed David H. Cascaden that you know of, outside of the corporation?

A. Nothing, unless it is the three thousand dollar note we are just bringing suit for signed by Mr. Weber and Mr. Petree.

Q. Now, while you mention that I want to get at this three thousand dollar note. You swore to this complaint?     A. Yes, sir.

Q. Now, you allege here, in paragraph 3, "That on or about the [73] 31st day of October, 1917, defendant," that is, George Weber, "above named borrowed from the Farmers Bank of Fairbanks the sum of three thousand dollars, and plaintiff David H. Cascaden and David Petree signed a note then and there given by said George Weber

(Testimony of Blanche Cascaden.)

to the Farmers Bank of Fairbanks as joint makers with the defendant above named, but said money was for the sole use and benefit of the defendant above named." Now, you swore to that complaint. Now, where do you get those facts about this three thousand dollars being borrowed for the sole use and benefit of George Weber, where do you get that?

A. Well, I think Mr. Clark can answer that as well as I can.

Q. Now, you swore to this complaint. Now tell me where you got that?

A. Well, I asked Mr. Weber once myself what he used the three thousand dollars for, and he said, "Oh, for the brewery and different things, for different purposes."

Q. If he did it for the brewery then he didn't do it for himself personally?

A. Well, he said different purposes, too, you know.

Q. But you swear in this complaint he borrowed that for his own use and that Petree went on his note as security to him. Where did you get that, that Petree went on that note as security for a personal loan of George Weber's?

Mr. CLARK.—She just told you he told her at one time that he borrowed the money.

Mr. ROTH.—That he had borrowed the money for himself.

Q. Did you say George Weber ever told you he borrowed that money for himself personally? [74]



(Testimony of Blanche Cascaden.)

A Not personally for himself, but I said, "What did you do with that money, what did you use it for?" and he said, "Oh, for the brewery and other purposes." Those are the very words he used.

Q. And on that you swear positively that he said he borrowed it for his own personal benefit and that Dave Petree went on that note to secure that personal payment of his? On that statement, now, you made this oath, eh, with no other information at all, isn't that correct?

A. Well, I don't know just exactly how you have it put there.

Q. Here is the way it is put; here is the way you put it—I am not putting it at all: "That on or about the 31st day of October, 1917, defendant above named"—that is George Weber—"borrowed from the Farmers Bank of Fairbanks the sum of three thousand dollars, and plaintiff David H. Cascaden and David Petree signed a note then and there given by said George Weber to the Farmers Bank of Alaska as joint makers with the defendant above named, but said money was for the sole use and benefit of the defendant above named," who was George Weber.

A. Well, chances are it were, because he told me himself he used it for the brewery and for other purposes, to pay bills and things for himself. I suppose he didn't have the money and that is what he used it for. I asked the man what he used it for.

Q. Did he say he used it for himself?

(Testimony of Blanche Cascaden.)

A. He said part of it for the brewery and for other purposes.

Q. Did he say for other purposes for himself personally? A. He didn't add that, no. [75]

Q. But you added that in here?

Mr. CLARK.—Oh, now, if the Court please, that is just simply quibbling. If it is for his own use and benefit—

Mr. ROTH. (Interrupting.) I think that I have an answer fully and complete.

Q. Did you know at the time that you swore to this complaint that you had already brought a suit to foreclose a note for the identical same amount?

A. No, sir.

Q. You didn't know it at the time?

A. No, sir. I don't know it yet either.

Q. How is that? A. I don't think so yet.

Q. You don't think so yet? A. No, sir.

Q. If you had known it you wouldn't have brought this suit? A. No, sir.

Mr. CLARK.—We object to that, if the Court please. That is irrelevant, immaterial and incompetent. Our contention is if this mortgage that was given, the second mortgage that was given, if it was given for anything it was additional security in addition to that note.

Mr. ROTH.—I am cross-examining this witness, if the Court please, to find out—

Mr. CLARK. (Interrupting.) Well, you know well enough the attorneys prepare these things ac-

(Testimony of Blanche Cascaden.)

cording to the legal status of the affair, and that the client, if she believes it to be true, [76] signs it.

Mr. ROTH.—Well, I am not in the habit of preparing a complaint and asking my client to sign and swear to it.

The COURT.—The objection will be overruled.

Q. Where did you get this note that you sued on, this three thousand dollar note?

A. In Mr. Cascaden's safe deposit box.

Q. Where did you get the other note that you sued the Fairbanks Beverage Company on for \$3,033.00?

A. All those notes were in Mr. Cascaden's box in the bank, in the First National; all the notes that we have were in that box.

Q. Weren't also a lot of the Beverage Company's notes in that box, too?

A. Well, those that the Beverage Company had given Mr. Cascaden, yes, but nothing belonging to the Beverage Company.

Q. Did you get possession of the papers of the Beverage Company?

A. How do you mean? What papers?

Q. You got a safe, didn't you? A. Yes, sir.

Q. And in that safe David Petree had papers, didn't he? A. They are still there, I guess.

Q. And in those papers of David Petree's, you found this three thousand dollar note, did you not, that three thousand dollar note that you are suing on here? That is where you got that note, wasn't it?

(Testimony of Blanche Cascaden.)

A. No, the note I am suing on was in Mr. Cascaden's safe [77] deposit box in the bank, the three thousand dollar note, not in the safe of Dave Petree.

Q. No, I am not talking about the three thousand dollar note, I am talking about—oh yes, I am talking about the three thousand dollar note, that's right.

A. I thought you were.

Q. You say it was in Cascaden's safe deposit box?

A. Yes, sir.

Q. And you don't believe that is the same note?

A. I do not.

Q. Because it has three names on it and the other one had two, wasn't that it?

A. I don't know what the other had. I know what this one had.

Q. Well, you know what the other one had, don't you? Didn't you go and examine the records, that Farmers Bank note, before you brought this suit?

A. No, I didn't examine the records.

Mr. ROTH.—That is all.

#### Redirect Examination.

(By Mr. CLARK.)

Q. After Mr. Cascaden went outside, was taken outside, you were appointed guardian, were you?

A. Yes, sir.

Mr. ROTH.—That is admitted.

Q. And you attempted then to gather up his papers and effects and to realize on the assets?

A. Yes, sir.

(Testimony of Blanche Caseaden.)

Q. You got his tin box from the bank?

A. Yes. [78]

Q. And went through his papers that were contained therein? A. Yes, sir.

Q. And that is where you found the notes that you have sued on in the various accounts in this court?

A. Yes, sir. They were in care of Mr. Hess.

Mr. CLARK.—That is all.

Recross-examination.

(By Mr. ROTH.)

Q. At the time that you had this conversation—I overlooked that before—at the time that you had this conversation with George Weber up there is it not true that you told him that Dave, referring to your husband David H. Caseaden, had told you that when this mortgage was foreclosed, the matter was settled, that you were to deed back, or assign back his interest to him, but now that he brought this suit you weren't going to do it?

Mr. CLARK.—We object as going into collateral matters. If we go into that matter it will open up a proposition that will take hours to cover, and it had nothing to do with this particular transaction whatever, and we object as it is not cross-examination.

The COURT.—Overruled.

A. Why, I told Mr. Weber, not that time, but—

Q. (Interrupting.) Did you tell him that that I asked you there?

A. Well, no, I didn't tell him at that time, but I

(Testimony of Blanche Cascaden.)

told him a number of times before when he started in the case—

Q. (Interrupting.) Never mind, I am not asking you that. [79]

A. No, I didn't tell him that at that time.

Q. You didn't tell him that at that time?

A. No, I didn't tell him that at that time.

Mr. ROTH.—That is all.

A. (Repeating.) I didn't tell him that at that time.

Mr. CLARK.—That is all, Mrs. Cascaden.

(Witness excused.)

Mr. CLARK.—It is clearly understood that whole record in that other case has been introduced in evidence so it can be referred to?

Mr. ROTH.—Yes.

Mr. CLARK.—I think that is all.

(Plaintiffs rest in rebuttal.)

Mr. ROTH.—Now, if the Court please, as I stated, I have this note in my possession—I haven't it here present—that was given to Ahlberg. George Weber testified that Cascaden did not sign that note. That is the only thing that was pertinent, as I understood it, and for that reason I didn't bring the note here, because there is no evidence to the contrary on the point, and I merely want to explain why, when I stated I had the note in my possession that I haven't it here, because the only one thing that was pertinent at all was that Cascaden didn't sign the note. It is understood that George Weber testified that Cascaden did not sign



that note, that he and Petree signed it, that three thousand dollar note. With that understanding, why, we rest the case. I have [80] the note, and I am stating now that is why I didn't bring it here.

The COURT.—We will take an adjournment at this time, Gentlemen, until 10:00 o'clock Monday morning. At that time the case will be finished.

Whereupon an adjournment was taken until Monday, April 2, 1923, at 10:00 o'clock A. M.

Morning Session.

Monday, April 2, 1923, 10:00 A. M.

Mr. ROTH.—If the Court please, before the argument I desire to renew, for the purpose of the record, the motion for nonsuit that I made at the conclusion of the testimony of the plaintiff.

The COURT.—Very well. The motion may be denied.

Mr. ROTH.—We reserve an exception.

The COURT.—Exception allowed.

Mr. CLARK.—If the Court please, I have a motion I desire to file (handing paper to the Court).

The COURT.—Your motion may be denied, Mr. Clark.

Mr. CLARK.—Note an exception.

The COURT.—Exception allowed.

Mr. CLARK.—Now, if the Court please, I ask leave at this [81] time to file a second amended reply to conform to the proof adduced in this case. It is different from the first amended reply in this particular: In the first amended reply we alleged

that Dave Cascaden, Dave Petree and George Weber purchased the Tanana Bottling Works. The evidence discloses that Dave Cascaden had nothing to do with the purchase of that, and I have amended the reply in that particular. I have also amended in another particular, wherein I allege that the note for three thousand dollars sued on had been given without consideration on the part of either Petree—no, this two thousand dollar note without any consideration upon the part of Petree or of Cascaden. Now the evidence discloses that it was, according to Mr. Webber's testimony, that it was Mr. Petree's obligation, and I desire to file an amended reply eliminating the name of Cascaden from my defense. The Court will realize that Mrs. Cascaden, the plaintiff in this action is under somewhat of a handicap, as Mr. Weber is the only one of the parties that was interested or knew anything about the transaction, and consequently our pleading could not be absolutely accurate, and now I desire to file an amended reply to conform to the proof.

Mr. ROTH.—If the Court please, I don't think that is proper.

Mr. CLARK.—It certainly is permissible.

The COURT.—The court has already prepared its instructions in the case. So far as the Court is concerned the case will be tried on the pleadings as made, and I deny your request to file an amended reply.

Mr. CLARK.—To which we note an exception.

The COURT.—Exception allowed.

(Testimony closed.)

That the exhibits referred to in the foregoing testimony were as follows: [83]

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**Plaintiffs' Exhibit "A."**

\$3,000.00. Fairbanks, Alaska, Oct. 31st, 1917.

Six months after date, without grace, for value received, I promise to pay to the order of the Farmers Bank, of Fairbanks, at their office in Fairbanks, Alaska, the sum of Three Thousand and no/100—Dollars with interest thereon at the rate of One per cent per month from date hereof until paid; both principal and interest payable in lawful money of the United States. Interest to be paid monthly, and if not so paid the whole sum of both principal and interest shall become immediately due and collectable at the option of the holder of this note. In the event suit is brought to collect this note, or any portion thereof, I promise to pay in addition to the costs and disbursements provided by statute, a reasonable amount for attorney's fee. For value received each and every party signing this note, either as endorser, surety, guarantor, or assignor, waives presentment, demand, protest, and notice of non-payment thereof, and binds himself thereon as a principal.

No. A-22.

Due April 30, 1918.

(Signed) GEO. WEBER,  
DAVID PETREE,  
D. H. CASCADEN.

Endorsements:

Nov.                    paid \$30. Interest to Nov. 31-17.  
Jan. 2, 1918, paid \$30. Interest to Dec. 31-17.  
Feb. 1, 1918, paid \$30. Interest to Jan. 31-18.  
Apr. 22, 1918, paid \$30. Interest to Feb. 28-1918.  
Apr. 22, 1918, paid \$30. Interest to March 31-1918.  
May 22, 1918, paid \$60. Interest to May 31-1918.

[Endorsed]: Filed Mar. 31, 1923. Rob't. W. Taylor, Clerk. [84]

**Plaintiff's Exhibit "B."**

\$500.00.            Fairbanks, Alaska, June 25th, 1918.

Six months after date, without grace, for value received, I promise to pay to the order of David H. Cascaden at Fairbanks, Alaska, the sum of Five Hundred and no/100—Dollars with interest thereon at the rate of One per cent per month from date until paid; both principal and interest payable in lawful money of the United States. Interest to be paid monthly, and if not so paid the whole sum of both principal and interest shall become immediately due and collectable at the option of the holder of this note. In the event suit is brought to collect this note, or any portion thereof, I promise to pay in addition to the costs and disbursements provided by statute, a reasonable amount for attorney's fee. For value received each and every party signing this note, either as endorser, surety, guarantor, or assignor, waives presentment, demand, protest, and notice of non-payment thereof, and binds himself thereon as a principal.

Due Dec. 25/18.

(Signed) GEO. WEBER.

[Endorsed]: Filed Mar. 31, 1923. Rob't W. Taylor, Clerk. [85]

**Defendant's Exhibit No. 1.**

[Title of Court and Cause.]

**COMPLAINT.**

Now comes the plaintiff above-named and complains of the defendant above-named, and for cause of action alleges as follows, to wit:

**I.**

(1) That, on or about the 26th day of August 1921, David H. Cascaden was, by the Probate Court in and for the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, duly and regularly adjudged an insane person.

(2) That, thereafter and on or about the 6th day of September, 1921, Blanche Cascaden, plaintiff herein, was, by the United States Commissioner and *ex officio* Probate Judge in and for Fairbanks Precinct, Division and Territory aforesaid, duly and regularly appointed guardian of the estate of the said David H. Cascaden, an insane person; that she thereafter duly and regularly qualified as such guardian in the manner prescribed by law, and thereupon entered on the discharge of her duties as such guardian, and ever since said time has been, and now is, the duly appointed, qualified, and acting guardian of the estate of the hereinabove named insane person.

(3) That the defendant above named is a corporation, incorporated and existing under and by virtue of the laws of the Territory of Alaska. [86]

(4) That, on or about the 3d day of July 1918, the defendant above named, for value received,

made, executed, and delivered to said David H. Cascaden its certain promissory note, which is in the words and figures following, to wit:—

\$4,000.00. Fairbanks, Alaska, July 3d, 1918.

November 1st, 1919, after date, without grace, for value received, I promise to pay to the order of David H. Cascaden, at the First National Bank of Fairbanks, in Fairbanks, Alaska, the sum of Four thousand and no/100 Dollars with interest thereon at the rate of one per cent per month from date hereof until paid; both principal and interest payable in lawful money of the United States. Interest to be paid monthly, and if not so paid the whole sum of both principal and interest shall become immediately due and collectible at the option of the holder of this note. In the event suit is brought to collect this note, or any portion thereof, I promise to pay in addition to the costs and disbursements provided by statute a reasonable amount for attorney's fee. For value received, each and every party signing this note, either as endorser, surety, guarantor, or assignor, waives presentment, demand, protest, and notice of non-payment thereof, and binds himself thereon as a principal.

No. 9407.

Due November 1, 1919.

FAIRBANKS BEVERAGE CO., INC.,

By D. PETREE, Pres.

Attest: GEORGE WEBER,

Sec'y & Treas.

Endorsed:



Pay to the order of First National Bank of Fairbanks, Alaska.

DAVID H. CASCADEN.

Aug. 5 1918 Paid \$40.00 interest to 8/3/18  
Sep. 3 1918 Paid \$40.00 interest to 9/3/18  
Oct. 3 1918 Paid \$40.00 interest to 10/3/18  
Nov. 5 1918 Paid \$40.00 interest to 11/3/18  
Dec. 4 1918 Paid \$40.00 interest to 12/3/18  
Jan. 3 1919 Paid \$40.00 interest to 1/3/19  
Feb. 3 1919 Paid \$40.00 interest to 2/3/19  
Mar. 5 1919 Paid \$40.00 interest to 3/3/19  
Apr. 2 1919 Paid \$40.00 interest to 4/3/19  
May 2 1919 Paid \$40.00 interest to 5/3/19  
Jun. 2 1919 Paid \$40.00 interest to 6/3/19  
Jul. 7 1919 Paid \$40.00 interest to 7/3/19  
Aug 4 1919 Paid \$40.00 interest to 8/3/19  
Sep. 4 1919 Paid \$40.00 interest to 9/3/19  
Oct. 3 1919 Paid \$40.00 interest to 10/3/19

Pay to the order of D. H. Cascaden without recourse.

FIRST NATIONAL BANK OF FAIRBANKS, ALASKA,

By R. C. WOOD,

Pres.

(80¢ Internal Revenue stamps canceled.)

(5) That, at said time and as security for the payment of said note and the note described in the second cause of action herein set forth, the said defendant made, executed, and delivered [87] to said David H. Cascaden a certain real and chattel mortgage, covering and including the following described real and personal property situate in the

Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, to wit:

“Real estate in the Town of Fairbanks, Alaska, and known as Lot 9, in Block 8; Lots 14, 15, and 16, in Block 9; Lot 2 on Block 23; Lot 5, in Block 24; Lot 3, in Block 27; and Lot 7, in Block 28; together with all and singular all buildings, improvements, machinery, appurtenances and hereditaments thereunto belonging or in anywise appertaining.

Also including, among other properties, that certain frame residence building, heretofore known as the Barthel family residence, located on the north side of Front Street, opposite the plant formerly known as the Barthel Brewing plant, in Fairbanks, Alaska, together with all buildings and improvements connected therewith, as well as all of the furniture, fixtures, and furnishings contained therein.

Also including, among other properties, the tanks, buildings, machinery, tools, and appurtenances of every nature whatsoever, belonging to or forming a part of the Fairbanks Beverage Company's plant, as well as the plant heretofore known as the Tanana Bottling Works, in Fairbanks, Alaska;

Also all and singular all stock and supplies of every nature whatsoever and merchandise now owned by, as well as all stock, supplies, and merchandise hereafter acquired by the party of the first part (Fairbanks Beverage Co., Inc.) in the ordinary conduct of their corporate business.”

(6) That, thereafter and on the 6th day of July, 1918, the said mortgage was filed for record in the office of the Recorder of the Fairbanks Precinct aforesaid, and was thereafter recorded in Volume 8 of Real Estate Mortgages, at page 544 thereof, and indexed in Volume 3 of Chattel Mortgage Indexes, as Instrument No. 51537, a true copy of which said mortgage is hereto attached and marked "Plaintiffs' Exhibit "A," and said mortgage is hereby referred to as if included in full in this cause of action.

(7) That no part of said note has been paid, save and except that the interest has been paid on said note up to and including the 3d day of October 1919, and there is now due, owing, and unpaid on said note, the principal sum of \$4000.00, together with interest as described in said note, from the 3d day of October, 1919, at the rate of twelve per centum per annum.

(8) That plaintiff has been compelled to institute and prosecute this action to collect this note, and has become liable [88] to her attorney for a reasonable attorney's fee, and plaintiff is informed and believes and so alleges that the sum of \$750.00 would be a reasonable sum to be allowed to her said attorney for services rendered herein.

(9) That it is the duty of this plaintiff as such guardian to collect and conserve the assets of the estate of said David H. Cascaden, an insane person.

## II.

For a second and further cause of action in favor of plaintiff and against defendant herein, plaintiff alleges as follows, to wit:

(1) That, on or about the 26th day of August 1921, David H. Cascaden was, by the Probate Court in and for the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, duly and regularly adjudged an insane person.

(2) That, thereafter and on or about the 6th day of September 1921, Blanche Cascaden, plaintiff herein, was by the United States Commissioner and *ex officio* Probate Judge in and for Fairbanks Precinct, Division and Territory aforesaid, duly and regularly appointed guardian of the estate of the said David H. Cascaden, an insane person; that she thereafter duly and regularly qualified as such guardian in the manner prescribed by law, and thereupon entered on the discharge of her duties as such guardian, and ever since said time has been, and now is, the duly appointed, qualified, and acting guardian of the estate of the hereinabove-named insane person.

(3) That the defendant above-named is a corporation, incorporated and existing under and by virtue of the laws of the Territory of Alaska.

(4) That, on or about the 3d day of July, 1918, the defendant above-named, for value received, made, executed, and [89] delivered to said David H. Cascaden its certain promissory note, which is in the words and figures following, to wit:  
\$1000.00. Fairbanks, Alaska, July 3d, 1918.

November 1st, 1918, after date, without grace, for value received, I promise to pay to the order of David H. Cascaden, at the First National Bank of Fairbanks, in Fairbanks, Alaska, the sum of One thousand and no/100 Dollars, with interest thereon

at the rate of one per cent per month from date hereof until paid; both principal and interest payable in lawful money of the United States. Interest to be paid monthly, and if not so paid, the whole sum of both principal and interest shall become immediately due and collectible at the option of the holder of this note. In the event suit is brought to collect this note, or any portion thereof, I promise to pay in addition to the costs and disbursements provided by statute, a reasonable amount as attorney's fee. For value received, each and every party signing this note, either as endorser, surety, guarantor, or assignor, waives presentment, demand, protest, and notice of non-payment thereof, and binds himself thereon as a principal.

No. 9408.

Due November 1, 1918.

FAIRBANKS BEVERAGE CO., INC.,

By D. Petree,  
Pres.

Attest: GEORGE WEBER,  
Sec'y & Treas.

[Endorsed:]

Pay to the order of First National Bank of Fairbanks, Alaska.

DAVID H. CASCADEN.

Aug. 5 1918 Paid \$10.00 Interest to 8/3/18  
Sep. 3 1918 Paid \$10.00 Interest to 9/3/18  
Oct. 3 1918 Paid \$10.00 Interest to 10/3/18  
Nov. 5 1918 Paid \$10.00 Interest to 11/3/18  
Dec. 4 1918 Paid \$10.00 Interest to 12/3/18  
Jan. 3 1919 Paid \$10.00 Interest to 1/3/19  
Feb. 3 1919 Paid \$10.00 Interest to 2/3/19



Mar. 5 1919 Paid \$10.00 Interest to 3/3/19  
Apr. 2 1919 Paid \$10.00 Interest to 4/3/19  
May 1 1919 Paid \$10.00 Interest to 5/3/19  
Jun. 2 1919 Paid \$10.00 Interest to 6/3/19  
Jul. 7 1919 Paid \$10.00 Interest to 7/3/19  
Aug. 4 1919 Paid \$10.00 Interest to 8/3/19  
Sep. 4 1919 Paid \$10.00 Interest to 9/3/19  
Oct. 3 1919 Paid \$10.00 Interest to 10/3/19

Pay to the order of D. H. Cascaden without recourse.

FIRST NATIONAL BANK OF FAIR-  
BANKS, ALASKA,

By R. C. WOOD,  
Pres.

(20¢ Internal Revenue stamps canceled.)

(5) That, at said time and as security for the payment of said notes and the note described in the first cause of action herein set forth, the said defendant made, executed, and delivered to said David H. Cascaden a certain real and chattel mortgage, covering and including the following described real and [90] personal property, situate in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, to wit:

“Real estate in the Town of Fairbanks, Alaska, and known as Lot 9 in Block 8; Lots 14, 15, and 16, in Block 9; Lot 2 on Block 28; Lot 5, in Block 24; Lot 3, in Block 27; and Lot 7 in Block 28; together with all and singular all buildings, improvements, machinery, appurtenances, and hereditaments thereunto belonging or in anywise appertaining.



Also including, among other properties, that certain frame residence building heretofore known as the Barthel family residence, located on the north side of Front Street, opposite the plant formerly known as the Barthel Brewing Plant, in Fairbanks, Alaska, together with all buildings and improvements connected therewith, as well as all the furniture, fixtures and furnishings contained therein.

Also including, among other properties, the tanks, buildings, machinery, tools, and appurtenances of every nature whatsoever belonging to or forming a part of the Fairbanks Beverage Company's plant, including what was heretofore known as the Barthel Brewing Company's plant, as well as the plant heretofore known as the Tanana Bottling Works, in Fairbanks, Alaska;

Also all and singular all stock and supplies of every nature whatsoever and merchandise now owned by, as well as all stock, supplies, and merchandise hereafter acquired by the party of the first part in the ordinary conduct of their corporate business."

(6) That, thereafter and on the 6th day of July, 1918, the said mortgage was filed for record in the office of the Recorder of the Fairbanks Precinct aforesaid, and was thereafter recorded in Volume 8 of Real Estate Mortgages, at page 544 thereof, and indexed in Volume 3, of Chattel Mortgage Indexes as Instrument No. 51,537, a true copy of which said mortgage is hereto attached and marked

“Plaintiff’s Exhibit A,” and said mortgage is hereby referred to as if included in full in this second cause of action.

(7) That no part of said note has been paid, save and except that interest has been paid thereon up to the 3d day of October, 1919, and there is now due, owing, and unpaid on said note the principal sum of one thousand dollars, together with interest thereon at the rate of twelve per centum per annum from said 3d day of October, 1919.

(8) That plaintiff has been compelled to institute and prosecute this action to collect said note and has become liable to her attorney for a reasonable attorney’s fee, and plaintiff [91] is informed and believes and so alleges that the sum of \$250.00 would be a reasonable sum to be allowed to her said attorney for services rendered herein.

(9) That it is the duty of this plaintiff as such guardian to collect and conserve the assets of the estate of said David H. Cascaden, an insane person.

### III.

For a third and further cause of action in favor of plaintiff and against defendant herein, plaintiff alleges as follows, to wit:

(1) That, on or about the 26th day of August, 1921, David H. Cascaden was, by the Probate Court in and for the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, duly and regularly adjudged an insane person.

(2) That, thereafter and on or about the 6th day of September, 1921, Blanche Cascaden, plaintiff herein, was, by the United States Commissioner

and *ex officio* Probate Judge in and for Fairbanks Precinct, Division and Territory aforesaid, duly and regularly appointed guardian of the estate of the said David H. Cascaden, an insane person; that she thereafter duly and regularly qualified as such guardian in the manner prescribed by law, and thereupon entered on the discharge of her duties as such guardian, and ever since said time has been, and now is, the duly appointed, qualified, and acting guardian of the estate of the hereinabove named insane person.

(3) That the defendant above named is a corporation, incorporated and existing under and by virtue of the laws of the Territory of Alaska.

(4) That, on or about the 3d day of July, 1918, the defendant above named, for value received, made, executed, and delivered to said David H. Cascaden its certain promissory note, which is in the words and figures following, to wit: [92]  
\$3033.00. Fairbanks, Alaska, July 3d, 1918.

Two years after date, without grace, we promise to pay to the order of David H. Cascaden Three Thousand and Thirty-three and no/100 Dollars, in gold coin of the United States of America, of the present standard value, with interest thereon in like gold coin, at the rate of one per cent per month from date until paid, for value received. Interest to be paid annually and if not so paid the whole sum of both principal and interest to become immediately due and collectible at the option of the holder of this note. And in case suit or action is instituted to collect this note or any portion thereof,

we promise and agree to pay, in addition to the costs and disbursements provided by statute, a reasonable sum in like gold coin for attorney's fees in said suit or action.

Due July 3d, 1920.

No. —.

FAIRBANKS BEVERAGE CO., INC.,

By D. PETREE,

Pres.

Attest: GEORGE WEBER,

Sec'y and Treas.

[Endorsed]: David H. Cascaden.

(5) That, at said time and as security for the payment of said note, the said defendant made, executed, and delivered to said David H. Cascaden a certain real and chattel mortgage, covering and including the following described real and personal property situate in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, to wit:

“All and singular all real, personal, and mixed property of every nature, kind and description whatsoever, located in Alaska, or elsewhere, owned by the said party of the first part (The Fairbanks Beverage Company, Inc.); including among other properties, the following described real estate, in the town of Fairbanks, and known as Lot 9, in Block 8; Lots 14, 15, and 16, in Block 9; Lot 2, in Block 23; Lot 5, in Block 24; Lot 3, in Block 27; and Lot 7, in Block 28; together with all and singular all buildings, improvements, machineries, ap-

purtenances, and hereditaments thereunto belonging or in anywise appertaining. Also including, among other properties, that certain frame residence building, heretofore known as the Barthel family residence, located on the north side of Front Street, opposite the plant formerly known as the Barthel Brewing plant, in Fairbanks, Alaska, together with all buildings and improvements connected therewith, as well as all the furniture, fixtures, and furnishings contained therein. Also including, among other properties, the tanks, buildings, machinery, tools, and appurtenances of every nature whatsoever, belonging to or forming a part of the Fairbanks Beverage Company's plant, including what was heretofore known as the Barthel Brewing Company's plant, as well as the plant heretofore known as the Tanana Bottling Works, in Fairbanks, Alaska; also all and singular all stock and supplies of every nature whatsoever and merchandise now owned by, as well as all stock, supplies, and merchandise hereafter acquired by the party of the first part in the ordinary conduct of their corporation business, subject, however, to that certain mortgage of this date by the party of the first part herein to the party of the second part herein, to secure two promissory notes aggregating the sum of five thousand dollars (\$5000.00), together with interest thereon, which mortgage is hereby declared to be prior and superior to this instrument." [93]



(6) That, thereafter and on the 6th day of July, 1918, the said mortgage was filed for record in the office of the Recorder of the Fairbanks Precinct aforesaid, and was thereafter recorded in Volume 8 of Real Estate Mortgages, at page 566 thereof, and indexed in Volume 3 of Chattel Mortgage Indexes as Instrument No. 51538, a true copy of which said mortgage is hereto attached and marked "Plaintiff's Exhibit B," and said mortgage is hereby referred to as if included in full in this third cause of action.

(7) That no part of said note has been paid, either principal or interest, and there is now due, owing, and unpaid on said note the principal sum of three thousand thirty-three dollars, together with interest thereon at the rate of one per centum a month from the 3d day of July, 1918.

(8) That plaintiff has been compelled to institute and prosecute this action to collect said note and has become liable to her attorney for a reasonable attorney's fee, and plaintiff is informed and believes and so alleges that the sum of \$500.00 would be a reasonable sum to be allowed to her said attorney for services rendered herein.

(9) That it is the duty of this plaintiff as such guardian to collect and conserve the assets of the estate of said David H. Cascaden, an insane person.

WHEREFORE, plaintiff prays judgment against defendant as follows, to wit:

(1) For judgment against defendant and in favor of plaintiff on her first cause of action for the



principal sum of Four Thousand Dollars, together with interest thereon at the rate of twelve per cent per annum from the 3d day of October, A. D. 1919, together with an attorney's fee in the sum of \$750.00.

(2) For judgment against defendant and in favor of plaintiff [94] on her second cause of action for the principal sum of one thousand dollars, together with interest thereon at the rate of twelve per centum per annum from the 3rd day of October, 1919, together with attorney's fee in the sum of \$250.00;

(3) For foreclosure of the mortgage described in the first and second causes of action herein, and that this Court order the United States Marshal for the Fourth Judicial Division of the Territory of Alaska to sell, in the manner prescribed by law, all the mortgaged property now remaining undisposed of, and that the proceeds thereof be paid to the plaintiff herein.

(4) For judgment against the defendant above named for the sum of three thousand thirty-three dollars, on plaintiff's third cause of action herein, together with interest thereon at the rate of twelve per centum per annum from the third day of July, 1918, together with an attorney's fee in the sum of five hundred dollars, and for an order of this Court decreeing said mortgage described in said third cause of action to be second mortgage and subordinate to the mortgage described in the plaintiff's first and second causes of action, and that, if any money remains in the hands of the United States

Marshal from the sale of the property described in Plaintiff's Exhibit "A," after paying all sums due on the notes described in the first and second causes of action herein, said money be paid and delivered to plaintiff herein, to apply on the judgment secured on the note described in the said third case of action herein.

(5) That defendant's equity of redemption in said property be fixed and determined.

(6) That this plaintiff have judgment for any deficiency that remains on the judgments secured in this action on any of the causes of action set forth herein, after application of the payments derived from the sale of the mortgaged property.  
[95]

(7) That plaintiff have judgment for costs of suit, and for such other and further relief as to this Court shall appear meet, just, and equitable in the premises.

JOHN A. CLARK,  
Attorney for Plaintiff.

United States of America,  
Territory of Alaska,—ss.

Blanche Cascaden, being first duly sworn according to law, on her oath deposes and says: I am the duly appointed, qualified, and acting guardian of the estate of David H. Cascaden, an insane person, and am one of the plaintiffs in the above-entitled action; I have read the foregoing complaint, know the contents thereof, and the matters and things therein set forth are true, as I verily believe.

BLANCHE CASCADEN.

Subscribed and sworn to before me on this the 20th day of December, A. D. one thousand nine hundred twenty-one.

[Seal]

JOHN A. CLARK,

Notary Public in and for the Territory of Alaska.

My commission expires 24 April, 1922.

[Endorsed]: Filed Feb. 20, 1922. Rob't W. Taylor, Clerk. By Frank Bishoprick, Deputy. Mar. 31, 1923. Rob't W. Taylor, Clerk. [96]

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51537.

### REAL and CHATTEL MORTGAGE.

This real and chattel mortgage made this 3d day of July, 1918, by and between the Fairbanks Beverage Co. Inc., a corporation organized and existing under the laws of Alaska, party of the first part, and David H. Cascaden party of the second part, WITNESSETH:

That the party of the first part for and in consideration of the sum of five thousand (\$5,000.00) dollars paid by the party of the second part to the party of the first part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, transfer and confirm unto the party of the second part, his heirs, executors, administrators and assigns, all and singular, all real, personal and mixed property of every nature, kind and description whatsoever, located in Alaska, or elsewhere, owned by the said party of the first part; including among other properties, the following described real estate in the town of Fairbanks,

Alaska, and known as Lot 9, in Block 8; Lots 14, 15, and 16, in Block 9; Lot 2, on Block 23; Lot 5, in Block 24, Lot 3, in Block 27; and Lot 7 in Block 28, together with all and singular, all buildings, improvements, machinery, appurtenances and hereditaments thereunto belonging, or in anywise appertaining. Also, including, among other properties, that certain frame residence building heretofore known as the Barthel family residence, located on the north side of Front Street, opposite the plant formerly known as the Barthel Brewing Plant, in Fairbanks, Alaska, together with all buildings and improvements connected therewith, as well as all the furniture, fixtures and furnishings contained therein. Also including, among other properties, the tanks, buildings, machinery, tools, and appurtenances of every nature whatsoever belonging to, or forming a part of, the Fairbanks Beverage company's plant, including what was heretofore [97] known as the Barthel Brewing Company's plant, as well as the plant heretofore known as the Tanana Bottling Works, in Fairbanks, Alaska; also, all and singular, all stock and supplies of every nature whatsoever and merchandise now owned by, as well as all stock, supplies and merchandise hereafter acquired by the party of the first part in the ordinary conduct of their corporate business.

In trust, nevertheless, as a mortgage to secure the payment of two certain promissory notes of even date herewith, signed by the party of the first part, payable to the party of the second part,

bearing interest at 1% per month, from date until paid, one of said notes being for the sum of one thousand (\$1,000.00) dollars payable November 1st, 1918, the other of said notes being for the sum of four thousand (\$4,000.00) payable November 1st, 1919.

Provided, that if the party of the first part shall well and truly pay, or cause to be paid, both of said promissory notes and the whole thereof when due, together with interest thereon, according to the terms thereof, then this mortgage and the estate thereby granted and assigned shall be null and void, otherwise, to remain in full force and virtue.

It is further provided, that if the party of the first part shall fail to promptly pay said notes, or either of them, at the time the same, or either of them, is due and payable according to the terms thereof, or shall fail to pay the interest on said notes, or either of them, according to the terms of said notes, it is lawful for the party of the second part, his heirs, executors, administrators or assigns to therewith take possession of all of the personal property herein described, either with or without force, or with or without process of law and sell the same according to law as provided for the sale of personal property under execution and apply the proceeds from such sale to the payment of all costs in the premises, including a reasonable attorney's fee and the balance to the reduction or liquidation of any and all unpaid interests and principals due upon said [98] notes, or



either of them, and it is hereby mutually agreed that the United States Marshal, or his deputy, for the 4th Judicial Division of Alaska, may be directed to carry out the above provisions. And

Provided further that, if the party of the first part shall fail to pay said promissory notes, or either of them, when due, or the interest thereon, according to the terms thereof, it shall be lawful for the party of the second part, or his successors, to foreclose this mortgage and sell the property herein described, or any part thereof, according to law and out of the proceedings of such sale pay all costs in the premises, including a reasonable attorney's fee to be allowed plaintiff in such foreclosure proceedings and to pay any and all costs, interests and unpaid principals on said notes, or either of them, and to pay the residue, if any there be, to the party of the first part, or its successors. And

It is further provided that the mortgaged property herein described, and the whole thereof, may remain in the possession of the party of the first part during the life of this mortgage and until default by the party of the first part of any of the terms of this mortgage, and the taking possession of said property by or for the party of the second part. And

Provided further that the party of the first part may, until default, continue the conduct of its ordinary business by using any and all stock and supplies, herein mortgaged, in the manufacture



and sale of its various products and in the ordinary course of business.

IN WITNESS WHEREOF the party of the first part, by its President, attested by its Secretary and Treasurer, has affixed its signature the day and year first above written.

FAIRBANKS BEVERAGE CO., INC.

By D. PETREE,  
President.

Attest: GEORGE WEBER,  
Secretary and Treasurer. (Seal)

Witnesses:

MORTON E. STEVENS.

R. M. CRAWFORD. [99]

United States,  
Territory of Alaska,—ss.

David Petree, upon behalf of the mortgagor and David H. Cascaden for himself as mortgagee, being each duly sworn upon his oath, deposes and says: That the above and foregoing mortgage is made in good faith to secure the amount of debt therein named, and for the purposes therein recited and that the same is made without any design to hinder, defraud or delay creditors.

DAVID PETREE,  
DAVID H. CASCADEN.

Subscribed and sworn to before me this 3d day of July, 1918.

[Seal]

R. M. CRAWFORD.  
Notary Public for Alaska.

My commission expires May 10, 1921.

United States of America,  
Territory of Alaska,—ss.

This is to certify that on this 3d day of July, 1918, before me the undersigned notary public, personally appeared David Petree, who is known to me to be the president of the Fairbanks Beverage Co., Inc., and the same person who signed the foregoing instrument, and acknowledged that he signed the name of the Fairbanks Beverage Co., Inc., by himself as president, for the purposes therein mentioned and that the signing thereof was thereupon attested by George Heber, known to me to be the secretary and treasurer of said Company.

[Seal]

R. M. CRAWFORD.

Notary Public for Alaska.

My commission expires May 10, 1921.

Filed for record July 6, 1918 at 5 min. past 12  
P. M. Reed W. Heilig, Recorder. [100]

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51538.

### REAL AND CHATTEL MORTGAGE.

This real and chattel mortgage made this 3d day of July, 1918, by and between the Fairbanks Beverage Company, Inc., a corporation organized and existing under the laws of Alaska, party of the first part, and David H. Cascaden, party of the second part.

WITNESSETH: That the party of the first part for and in consideration of the sum of three thousand thirty-three (\$3,033.00) dollars paid by

the party of the second part to the party of the first part the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, transfer and confirm unto the party of the second part, his heirs, executors, administrators and assigns, all and singular, all real, personal and mixed property of every nature, kind and description whatsoever, located in Alaska, or elsewhere, owned by the said party of the first part; including, among other properties, the following described real estate, in the town of Fairbanks, Alaska, and known as Lot 9, in Block 8; Lots 14, 15 and 16, in Block 9; Lot 2 in Block 23; Lot 5 in Block 24; Lot 3 in Block 27, and Lot 7 in Block 28, together with all and singular, all buildings, improvements, machineries, appurtenances and hereditaments thereunto belonging, or in anywise appertaining. Also, including, among other properties, that certain frame residence building heretofore known as the Barthel family residence, located on the north side of Front Street, opposite the plant formerly known as the Barthel Brewing Plant, in Fairbanks, Alaska, together with all buildings and improvements connected therewith, as well as all of the furniture, fixtures and furnishings contained therein. Also including, among the properties, the tanks, buildings, machinery, tools and appurtenances of every nature whatsoever, belonging to, or forming a part of, the Fairbanks Beverage Company's plant, including what was heretofore known as the Barthel Brewing Company's plant, as well as the plant heretofore known as the Tanana Bottling Works, in Fairbanks,

Alaska; also, all and singular, all stock and supplies of every nature whatsoever, and [101] merchandise, now owned by, as well as all stock, supplies and merchandise hereafter acquired by the party of the first part in the ordinary conduct of their corporate business. Subject, however, to that certain mortgage of this date by the party of the first part herein to the party of the second part herein, to secure two promissory notes aggregating the sum of Five Thousand (\$5000.00) Dollars, together with interest thereon, which mortgage is hereby declared to be prior and superior to this instrument.

In trust nevertheless, as a second mortgage to secure the payment of a certain promissory note of even date herewith, signed by the party of the first part, payable to the party of the second part, bearing interest at 1% per month, from date until paid, said note being for the sum of Three Thousand Thirty-three (\$3033.00) Dollars, payable July 3d, 1920.

Provided, that if the party of the first part shall well and truly pay, or cause to be paid, said note and the whole thereof, when due, together with interest thereon, according to the terms thereof, then this mortgage and the estate thereby granted and assigned shall be null and void, otherwise to remain in full force and virtue. And

It is further provided, that if the party of the first part shall fail to promptly pay said note at the time the same is due and payable according to the terms thereof, or shall fail to pay the interest on said note, according to the terms of said note,

it is lawful for the party of the second part, his heirs, executors, administrators or assigns to therewith take possession of all of the personal property herein described, either with or without force or with or without process of law and sell the same according to law as provided for the sale of personal property under execution and apply the proceeds from such sale to the payment of all costs in the premises, including a reasonable attorney's fee and the balance to the reduction or liquidation of any and all unpaid interest and principal due upon said note, and it is hereby mutually agreed that the United States Marshal, or his deputy, for the [102] 4th Judicial Division of Alaska, may be directed to carry out the above provisions. And

¶ Provided further that, if the party of the first part shall fail to pay said promissory note when due, or the interest thereon, according to the terms thereof, it shall be lawful for the party of the second part, or his successors, to foreclose this mortgage and sell the property herein described, or any part thereof, according to law, and out of the proceedings of such sale pay all costs in the premises, including a reasonable attorney's fee to be allowed plaintiff in such foreclosure proceedings and to pay any and all costs, interest and unpaid principal on said note, and to pay the residue, if any there be, to the party of the first part, or its successors. And

It is further provided that the mortgaged property herein described, and the whole thereof, may remain in the possession of the party of the first



part during the life of this mortgage and until default by the party of the first part of any of the terms of this mortgage, and the taking possession of said property, by or for the party of the second part. And

Provided further that the party of the first part may, until default, continue the conduct of its ordinary business by using any and all stock and supplies, herein mortgaged, in the manufacture and sale of its various products and in the ordinary course of business. IN WITNESS WHEREOF the party of the first part, by its president, attested by its secretary and treasurer, has affixed its signature the day and year first above written.

FAIRBANKS BEVERAGE CO., INC.

By D. PETREE,

President.

Attest:

[Seal]

GEORGE WEBER,

Secretary and Treasurer.

Witnesses:

MORTON E. STEVENS.

R. M. CRAWFORD.

United States of America,  
Territory of Alaska,—ss.

David Petree, upon behalf of the mortgagor, and David H. [103] Cascaden, for himself as mortgagee, being each duly sworn, upon his oath deposes and says: That the above and foregoing mortgage is made in good faith to secure the amount of debt therein named and for the purposes therein recited



and that the same is made without any design to hinder, defraud or delay creditors.

DAVID PETREE.

DAVID H. CASCADEN.

Subscribed and sworn to before me this 3d day of July, 1918.

[Seal]

R. M. CRAWFORD,

Notary Public for Alaska.

My commission expires May 10, 1921.

United States of America,  
Territory of Alaska,—ss.

This is to certify that on this 3d day of July, 1918, before the undersigned notary public, personally appeared David Petree, who is known to me to be the President of the Fairbanks Beverage Co., Inc., and the same person who signed the foregoing instrument, and acknowledged that he signed the name of the Fairbanks Beverage Co., Inc., by himself as president, for the purposes therein mentioned and that the signing thereof was thereupon attested by George Weber, known to me to be the secretary and treasurer of said company.

[Seal]

R. M. CRAWFORD,

Notary Public for Alaska.

My commission expires May 10, 1921.

Filed for record July 6, 1918, at 7 min. past 2  
P. M. Reed W. Heilig, Recorder. [104]

**Defendant's Exhibit 2.**

\$3033.00. Fairbanks, Alaska, July 3d, 1918.

Two years after date, without grace, we promise to pay to the order of David H. Cascaden Three Thousand and Thirty-three and no/100 Dollars, in gold coin of the United States of America of the present standard value, with interest thereon in like gold coin, at the rate of one per cent per month from date until paid, for value received. Interest to be paid annually and if not so paid the whole sum of both principal and interest to become immediately due and collectible at the option of the holder of this note. And in case suit or action is instituted to collect this note or any portion thereof, we promise and agree to pay, in addition to the costs and disbursements provided by statute, a reasonable sum in like gold coin for attorney's fees in said suit or action.

Due July 3d, 1920.

No. —.

FAIRBANKS BEVERAGE CO., INC.

By D. PETREE,

Pres.

Attest: GEORGE WEBER,

Sec'y and Treas.

[Endorsed]: Filed Mar. 31, 1923. Rob't W. Taylor, Clerk. [105]

**Defendant's Exhibit 3.**

[Title of Court and Cause.]

**MOTION FOR DEFAULT.**

Comes now the plaintiff in the above-entitled action and moves this Court for the entry of an Order of Default against the defendant above named, for the reason that the defendant has failed to appear and answer the complaint on file in said action within the time prescribed by law, said defendant having been duly and regularly served with process at Fairbanks, Alaska, in the manner prescribed by law, all of which is shown by the Marshal's Return on file herein, to which reference is hereby specifically made.

Dated April 12th, 1922.

JOHN A. CLARK,  
Attorney for Plaintiff.

[Endorsed]: Filed Mar. 31, 1923. Rob't W. Taylor, Clerk. April 12, 1922. Rob't W. Taylor, Clerk. By R. H. Geoghegan, Deputy. [106]

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[Title of Court and Cause.]

**Stipulation in Re Defendant's Exhibit No. 4.**

It is hereby stipulated and agreed by and between the attorney for the plaintiffs and the attorneys for the defendant above named that, instead of inserting in the bill of exceptions herein, as Defendant's Exhibit No. 4, all the papers contained in the files of

cause numbered 2560, the following instruments shall be set forth as Defendant's Exhibit No. 4, to wit:

(1) The judgment rendered by the Court in said action No. 2560;

(2) The execution issued on said judgment on the 15th day of May, 1922; and

(3) That portion of the United States marshal's return on said execution showing property sold and selling price thereof.

It is understood that the complaint in said cause No. 2560 is Defendant's Exhibit No. 1 herein; that the motion for default therein is Defendant's Exhibit No. 3 herein; and that Defendant's Exhibit No. 4, instead of containing all other papers in said cause No. 2560, need only contain the additional papers contained in said file, as specifically set forth above, and that that portion of said file, to wit, the complaint, and the motion for default, which are separate exhibits, need not be set forth again as a part of Defendant's Exhibit No. 4.

It is further stipulated that a copy of this stipulation shall be inserted in said bill of exceptions in connection with Defendant's said Exhibit No. 4.

Dated at Fairbanks, Alaska, this 8th day of May, 1923.

JOHN A. CLARK,  
Attorney for Plaintiffs.  
R. F. ROTH,

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Attorneys for Defendant.

[Endorsed]: Filed May 9, 1923. Rob't W. Taylor, Clerk. By Frank O'Farrell, Deputy. [107]

[Title of Court and Cause.]

**Defendant's Exhibit No. 4.**

**JUDGMENT.**

The above matter having come on regularly for trial before this Court, plaintiffs appearing by and through their attorney, John A. Clark, and the defendant not appearing, and it appearing to this Court that the defendant's default has been duly and regularly entered, as prescribed by law, and oral and documentary evidence having been introduced in support of plaintiffs' complaint, and this Court having heretofore found and established its findings of fact and conclusions of law and ordering the entry of judgment, and the Court being fully advised in the premises;

Now, therefore, it is **ORDERED, ADJUDGED AND DECREED**, as follows, to wit:

**I.**

That plaintiffs be, and they are hereby, given and granted judgment upon their first cause of action set forth in plaintiffs' complaint, in the sum of \$3213.82, being the balance of principal and interest due on the promissory note described in plaintiffs' first cause of action, together with an attorney's fee in the sum of \$500.00. [108]

**II.**

That plaintiffs be, and they are hereby, given and granted judgment upon their second cause of action set forth in plaintiffs' complaint, in the sum of \$1304.00, being the principal and interest due on the promissory note described in plaintiffs' second

cause of action, together with an attorney's fee in the sum of \$150.00.

### III.

That plaintiffs be, and they are hereby, given and granted judgment against defendant for the sum of \$4409.98, being the principal and interest due on the promissory note described in plaintiffs' third cause of action, together with an attorney's fee in the sum of \$250.00.

### IV.

That the mortgage described in plaintiffs' third cause of action is a second mortgage and subordinate to the mortgage described in plaintiffs' first and second causes of action.

### V.

That the mortgage described in plaintiffs' first and second causes of action be, and the same is hereby ordered foreclosed, and the United States Marshal for the Fourth Division of the Territory of Alaska is hereby ordered to take under execution and sell all of the property described in the said mortgages referred to in plaintiffs' first, second and third causes of action, not heretofore sold under foreclosure of the [109] *of the* chattel portion of said mortgage described in the first and second causes of action, to wit: To sell all of the following described property now remaining undisposed of:

“Real estate in the Town of Fairbanks, Alaska, and known as Lot 9, in Block 8; Lots 14, 15, and 16, in Block 9; Lot 2 in Block 23; Lot 5 in Block 24; Lot 3 in Block 27; and Lot 7 in Block 28; together with all and singular all



buildings, improvements, machinery, appurtenances and hereditaments thereunto belonging or in anywise appertaining.

Also including, among other properties, that certain frame residence building, heretofore known as the Barthel family residence, located on the north side of Front Street, opposite the plant formerly known as the Barthel Brewing plant, in Fairbanks, Alaska, together with all buildings and improvements connected therewith, as well as all of the furniture, fixtures, and furnishings contained therein;

Also including, among other properties, the tanks, buildings, machinery, tools, and appurtenances of every nature whatsoever, belonging to or forming a part of the Fairbanks Beverage Company's plant, including what was heretofore known as the Barthel Brewing Company's Plant, as well as the plant heretofore known as the Tanana Bottling Works, in Fairbanks, Alaska;

Also all and singular all stock and supplies of every nature whatsoever and merchandise now owned by, as well as all stock, supplies, and merchandise hereafter acquired by the party of the first part (Fairbanks Beverage Co., Inc.) in the ordinary conduct of their corporate business."

## VI.

That the said United States Marshal apply the net proceeds of said sale towards the satisfaction of the judgment above rendered upon the first and

second causes of action set forth in said complaint, and apply any over-plus towards the satisfaction of the judgment herein rendered upon the third cause of action set forth in said complaint, rendering any over-plus then remaining in his possession to the mortgagor.

### VII.

That all of the equity of plaintiffs in and to the property covered by said mortgages be, and the same is hereby, ordered foreclosed. [110]

### VIII.

That this judgment bear interest at the rate of eight per cent per annum from date hereof until paid.

For all of which, let execution issue.

Dated Fairbanks, Alaska, April 18, 1922.

CECIL H. CLEGG,

District Judge.

Entered in Court Journal No. 15, page 402.

[Endorsed]: Filed Apr. 18, 1922. Rob't W. Taylor, Clerk. By Frank Bishoprick, Deputy. [111]

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[Title of Court and Cause.]

### SPECIAL EXECUTION.

The President of the United States of America, to the Marshal of said Division and Territory,  
GREETING:

WHEREAS, Blanche Cascaden, as Guardian of the Estate of David H. Cascaden, an insane person, and D. H. Cascaden, as Plaintiffs, recovered judgment against The Fairbanks Beverage Company,

a corporation, as defendant, in the District Court for said Division and Territory, holding terms as aforesaid, on the 18th day of April, 1922, for the sum of Ninety-eight Hundred Thirty-two and 30/100 Dollars (\$9832.30), with interest thereon at the rate of twelve per cent until paid, and costs of suit, amounting to \$22.25, and

WHEREAS, said Court by said judgment ordered the United States Marshal for the Fourth Division of Alaska to proceed to sell all of the following described real and personal property belonging to the defendant above named not heretofore disposed of, to wit:

“Real estate in the Town of Fairbanks, Alaska, and known as Lot 9, in Block 8; Lots 14, 15 and 16, in [112] Block 9; Lot 2 in Block 23; Lot 5 in Block 24; Lot 3 in Block 27; and Lot 7 in Block 28; together with all and singular all buildings, improvements, machinery, appurtenances and hereditaments thereunto belonging or in anywise appertaining.

Also including, among other properties, that certain frame residence building, heretofore known as the Barthel family residence, located on the north side of Front Street, opposite the plant formerly known as the Barthel Brewing Plant, in Fairbanks, Alaska, together with all buildings and improvements connected therewith, as well as all of the furniture, fixtures and furnishings contained therein.

Also including, among other properties, the tanks, buildings, machinery, tools, and appur-

tenances of every nature whatsoever, belonging to or forming a part of the Fairbanks Beverage Company's plant, including what was heretofore known as the Barthel Brewing Company's Plant, as well as the plant heretofore known as the Tanana Bottling Works, in Fairbanks, Alaska.

Also all and singular all stock and supplies of every nature whatsoever and merchandise now owned by, as well as all stock, supplies, and merchandise hereafter acquired by the party of the first part (Fairbanks Beverage Co., Inc.) in the ordinary conduct of their corporate business."

THEREFORE, In the name of the United States of America, you are hereby commanded to levy upon, seize and take into execution the property above described and proceed to sell same in the manner prescribed by law, and apply the proceeds to the satisfaction of this judgment, and if the sums so realized are not sufficient to settle said judgment, costs and increased costs, etc., you are then commanded to take into execution the other personal property of said defendant in your Division of said District sufficient, subject to execution, to satisfy said judgment, interest and increased interest, costs and increased costs, and make sale thereof according to law; and if sufficient personal property cannot be found, then you are [113] further commanded to make the amount of said judgment, interest and increased interest, costs and increased costs, out of defendant's real property

Not exempt by law, and make return of this writ within sixty days from the date hereof.

Herein fail not, and have you then and there this writ.

Witness the Honorable E. E. RITCHIE, Judge of said court, and the seal of said court hereto affixed this 15th day of May, A. D. 1922.

[Court Seal]                      ROBERT W. TAYLOR,  
Clerk.  
By R. H. Geoghegan,  
Deputy.

[Endorsed]: Filed May 15th, 1922. Return docketed July 6th, 1922. [114]

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[Title of Court and Cause.]

MARSHAL'S RETURN ON SPECIAL EXECUTION.

I, G. B. Stevens, United States Marshal, for the Fourth Division, Territory of Alaska, do hereby certify and return, that I received the hereto attached Original Special Execution at Fairbanks, Alaska, on the 15th day of May, 1922, and that thereafter on the 17th day of May, 1922, I duly executed same by posting notice of the time and place of sale, in three public places within five miles of the place where the sale was to take place, to wit: One on the front of the United States Courthouse, one in the United States Postoffice and one on the McIntosh & Kubon Building at the corner of First Ave. and Cushman Street, all of said places being in the town of Fairbanks, Alaska, and did cause



said Notice of Sale to be published in the Fairbanks Daily News Miner, a newspaper of general circulation nearest the place where sale is to take place, for four consecutive weeks prior to said sale, as appears from the affidavit of W. F. Thompson, publisher of the said Fairbanks Daily News Miner, which is hereto attached and made a part of this return; fixing time and place of sale at 2 P. M., June 16, 1922, at the front door of the United States Courthouse, Fairbanks, Alaska.

That thereafter on the 16th day of June, 1922, at 2 P. M., at the front door of the United States Courthouse, this being the time and place appointed for said sale, I offered for sale and did sell to John A. Clark, attorney for plaintiff, for the sum of \$5,000.00, he being the highest and best bidder, and that being the only bid offered at said sale; all of the right, title and interest of the defendant in and to the following described property, to wit:

Lot No. 9 in Block No. 8.

Lots No. 14, 15 and 16 in Block No. 9.

Lot No. 2 in Block No. 23.

Lot No. 5 in Block No. 24.

Lot No. 3 in Block No. 27.

Lot No. 7 in Block No. 28.

According to the official survey of L. S. Robe for the town site trustee, together with all and singular, all buildings, improvements, machinery, appurtenances and hereditaments thereunto belonging or in anywise appertaining, all of said property being situate in the Town of Fairbanks, Fairbanks Re-



ording District, Fourth Judicial Division, Territory of Alaska.

That thereafter on the 16th day of June, 1922, I further executed said Special Execution with notice of garnishment on John A. Clark, who made answer that he had in his possession the following notes, to wit:

Note dated December 17, 1917, for \$1500.00, payable to the First National Bank, signed by Romeo Hoyt, H. Claude Kelly and the Barthel Brewing Co., and by said bank assigned to the Fairbanks Beverage Co. [115]

Note dated July 1, 1919, for \$710.75, payable to the Fairbanks Beverage Company, and signed by A. J. Nordale.

Note dated July 24, 1919, for \$217.00, payable to the Fairbanks Beverage Company and signed by H. Claude Kelly and Romeo Hoyt, which answer is hereto attached and made a part hereof, said notes were delivered into my possession on the 16th day of June, 1922.

That thereafter on the 19th day of June, 1922, I caused notices of sale to be posted in three public places in the town of Fairbanks, Fourth Division, Territory of Alaska, and within five miles of where the sale is to take place, as follows, to wit:

One on the Federal Courthouse, one on the Federal Postoffice, and one on the McIntosh and Kubon Building at the corner of First Ave. and Cushman Street, fixing the time and place of sale at 2 P. M. on the 30th day of June, 1922, at the front door of the Federal Courthouse.

That thereafter at 2 P. M. on the 30th day of June, 1922, in front of the Federal Courthouse, this being the time and place set for said sale, I offered for sale and did sell to John A. Clark, attorney for plaintiff, for the sum of Three Hundred Five and no/100 (\$305.00), that being the highest and best bid, and that being the only offer made at said sale;

The following described personal property, to wit:

Three (3) certain promissory notes particularly described as follows:

Note given by Hoyt and Kelly and endorsed by the Barthel Brewing Company, dated December 17th, 1917, for the sum of Fifteen Hundred and no/100 (\$1500.00) Dollars, payable to the First National Bank and by said bank assigned to the Fairbanks Beverage Company, a corporation, with accrued interest thereon amounting to the sum of Seven Hundred Sixteen and 50/100 (\$716.50) Dollars.

Note given by Kelly and Hoyt dated July 24th, 1919, for the sum of Two Hundred Seventeen and no/100 (\$217.00) Dollars and payable to the Fairbanks Beverage Company, a corporation, with accrued interest thereon amounting to the sum of Seventy-six and 38/100 (\$76.38) Dollars.

Note given by A. J. Nordale dated July 1st, 1919, for the sum of Seven Hundred Ten and 75/100 (\$710.75) Dollars, and payable to the Fairbanks Beverage Company, a corporation, with accrued interest thereon amounting to the sum of One Hundred Seventy and 58/100 (\$170.58) Dollars.

.	Note Number One for the sum of..\$	5.00
"	" Two for the sum of..	200.00
"	" Three for the sum of ..	100.00
		<hr/>
		\$305.00

. Dated at Fairbanks, Alaska, this 6th day of July,  
A. D. 1922.

G. B. STEVENS,  
United States Marshal.  
By John J. Buckley,  
Deputy. [116]

[Endorsed]: Filed Jul. 6, 1922. Rob't W. Taylor,  
Clerk. By Grace Fisher, Deputy. [117]

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**Defendant's Exhibit 5.**

\$2000.00. Fairbanks, Alaska, February 5th, 1918.

On or before July 1st, 1918, after date, without grace, for value received, I promise to pay to the order of George Weber at the office of St. George & Cathcart, in Fairbanks, Alaska, the sum of Two Thousand and 00/100 Dollars with interest thereon at the rate of one per cent per month from date hereon until paid; both principal and interest payable in lawful money of the United States. Interest to be paid at maturity and if not so paid the whole sum of both principal and interest shall become immediately due and collectible at the option of the holder of this note. In the event suit is brought to collect this note, or any portion thereof, I promise to pay in addition to the costs and disbursements

provided by statute, a reasonable amount for attorneys' fees. For value received, each and every party signing this note, either as indorser, surety, guarantor or assignor, waives presentment, demand, protest and notice of nonpayment thereof and binds himself thereon as a principal.

Due July 1st, 1918.

D. PETREE.

D. H. CASCADEN.

[Endorsed]: Filed Mar. 31, 1923. Rob't W. Taylor, Clerk. [118]

**Defendant's Exhibit 6.**

Credit	in full	
	Note	3000
Date Jun. 25, 1918.		

[Endorsed]: Filed Mar. 31, 1923. Rob't W. Taylor, Clerk. [119]

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**Defendant's Exhibit 7.**

Minutes of Special Meeting of the Board of Directors of the Fairbanks Beverage Company, Inc., June 25, 1918.

At a special meeting held at the office of the Fairbanks Beverage Co., Inc., on June 25th, 1918, there being present all of the directors of said company, to wit: David Petree, David H. Cascaden and George Weber; the holding of said meeting unanimously agreed to and notice thereof, as well as notice of the objects of said meeting having been expressly waived, the following proceedings were had, to wit:

After a discussion of the finances of the company and it appearing that a note for three thousand (\$3,000.00) dollars and interest due to the Farmers' Bank of Fairbanks, Alaska, secured by a mortgage on a portion of the property of the Fairbanks Beverage Co., Inc., has been due since April 30th, 1918, and that, in addition thereto said company needs ready money to the extent of about five thousand (\$5,000.00) dollars, for the purpose of extending and carrying on its business and liquidating its bills payable, David H. Cascaden expressed his willingness to loan this company said necessary money aggregating about eight thousand twenty-five (\$8,025.00) dollars, at the banking rate of 12% interest per annum, for a reasonable time, upon condition that the said company execute to said Cascaden its promissory notes secured by mortgage upon the assets of said corporation.

Thereupon it was moved by David Petree, seconded by George Weber and unanimously carried, that said offer be accepted and that this company, by its President and Treasurer, be authorized and directed to make, execute and deliver to the said Cascaden its promissory note, or notes, aggregating the sum of five thousand (\$5,000.00) dollars, bearing interest at 12% per annum for such time as may be agreed upon, secured by a first mortgage upon all of the assets of said company. And in order to obtain [120] said loan and execute said security that the officers of this company be further authorized and directed to make, execute and deliver to the said Cascaden its promissory note



for the amount of three thousand (\$3,000.00) dollars and accumulated interest on said Farmers' Bank debt, secured by a second mortgage upon the assets of this company for the purpose of paying and liquidating the note and mortgage of three thousand (\$3,000.00) dollars and interest due to the Farmers' Bank of Fairbanks, Alaska. And, further, that action be forthwith taken to carry out the objects of this resolution.

There being no other business to come before this meeting it was moved, seconded and carried that this Directors' meeting be adjourned.

DAVID PETREE.

[Seal]

DAVID H. CASCADEN.

GEORGE WEBER.

A true copy.

Attest: GEORGE WEBER,

Sec'y and Treas.

[Endorsed]: Filed Mar. 31, 1923. Robt. W. Taylor, Clerk. [121]

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That thereafter on April 2, 1923, and before the arguments of attorneys and the instructions of the Court, the plaintiffs filed the following motion for a directed verdict, to wit: [122]

[Title of Court and Cause.]

**Motion to Dismiss Affirmative Defense and Counter-claim in Defendant's Amended Answer and for a Directed Verdict Thereon.**

Come now the plaintiffs above named, at the close of the evidence in said cause introduced in



behalf of both plaintiffs and defendant, and move this Court for an order, dismissing the so-called affirmative defense and counterclaim set forth in the defendant's amended answer, and for an order, directing the jury to find against said defendant on said affirmative defense and counterclaim, on the ground and for the reason that it conclusively appears, from all the evidence introduced in said cause, that there was no consideration whatsoever for the execution of the note described in defendant's affirmative defense and counterclaim, so far as David H. Cascaden is concerned; that all the evidence shows conclusively that, at the time of the execution of said note, David H. Cascaden was not indebted to George Weber in any sum whatsoever, and that the signing of said note by David H. Cascaden was not made a condition of the acceptance of said note by the defendant, that defendant did not request that said David H. Cascaden sign said note and did not know that said note was signed by David H. Cascaden until after it had been delivered to him; and it further appears that there was no obligation [123] whatsoever on the part of David H. Cascaden to sign said note, and that said David H. Cascaden was a voluntary maker of said note without consideration and without solicitation on the part of the defendant or anyone else, so far as the evidence shows.

Dated at Fairbanks, Alaska, on this, the 2d day of April, A. D. one thousand nine hundred twenty-three.

JOHN A. CLARK,  
Attorney for Plaintiffs.

[Endorsed]: Filed Apr. 2, 1923. Rob't W. Taylor, Clerk. By Frank O'Farrell, Deputy.

Due service hereof admitted this 2 April, 1923.

R. F. ROTH,  
Attorney for Deft. [124]

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Which said motion was denied by the Court; to which plaintiffs then and there excepted, and said exception was allowed.

That, thereafter, said cause was argued to the jury by counsel for the respective parties, and thereupon the Court instructed said jury as follows, to wit: [125]

[Title of Court and Cause.]

### **Instructions of the Court.**

Gentlemen of the Jury:

#### **1.**

You are instructed that this is a civil action in which David H. Cascaden, and Blanche Cascaden as Guardian of the Estate of David H. Cascaden, an insane person, are plaintiffs, and George Weber is defendant.

The complaint alleges that Blanche Cascaden is the duly appointed guardian of said David H. Cascaden, an insane person, and that on or about the 21st day of October, 1917, the defendant George Weber borrowed from the Farmers' Bank of Alaska the sum of \$3,000.00, and that plaintiff David H. Cascaden and David Petree signed a note then and there given by said Weber to the

said Farmers' Bank of Fairbanks as joint makers with the defendant Weber, but that said money was for the sole use and benefit of the defendant Weber. The note is set out in full in the complaint, and the endorsements thereon. And it is alleged that the defendant Weber, at the maturity of said note, failed and neglected to pay same, and that David H. Cascaden thereafter, on the 25th day of June, 1918, paid the amount of said note, together with \$30.00 interest thereon, and that the defendant Weber has not repaid the amount of said note to plaintiff, nor any part thereof, and that the principal sum thereof is now due, [126] owing and unpaid from defendant to plaintiff, together with interest, that is to say, the sum of \$3,030.00 at one per cent per month from the 25th day of June, 1918.

The complaint also alleges that the plaintiff has been compelled to employ an attorney, and that the reasonable attorney's fee for instituting and conducting said action is the sum of \$600.00.

In a second and further cause of action against the defendant by the said plaintiffs it is alleged that the said D. H. Cascaden loaned to the said George Weber the sum of \$500.00 on or about the 25th day of June, 1918, and at said time the defendant Weber made, executed and delivered to the said Cascaden a certain promissory note for said sum, a copy of which is set out in the complaint in the second cause of action. And it is alleged that the defendant has not paid said note, or any part thereof, and the whole thereof is now due, together

with interest at the rate of one per cent per month from June 25, 1918.

And further, that plaintiffs have been compelled to employ an attorney with reference to securing judgment upon said last-mentioned note, and that a reasonable attorney's fee therefor is the sum of \$150.00.

Plaintiff therefore asks judgment against the defendant Weber as follows:

First. On the first cause of action, the principal sum of \$3,030.00, together with interest thereon at the rate of one per cent per month from the 25th day of June, 1918, together with an attorney's fee of \$600.00.

Second. On plaintiffs' second cause of action, for the sum of \$500.00, together with interest at the rate of one per cent per month from June 25, 1918, together with an attorney's fee in the sum of \$150.00.

The defendant, in his amended answer, denies that he individually [127] borrowed from the Farmers' Bank of Fairbanks, on the 3d day of October, 1917, or at any other time, or at all, the sum of \$3,000.00, for which a note was given signed by George Weber, and David Petree and D. H. Cascaden, as makers thereof, and denies that David Petree or David H. Cascaden, or either of them, signed said note as accommodation maker, and denies that the money borrowed at said time from said bank was for the sole use and benefit, or sole use or benefit, of defendant.

The defendant admits that David H. Cascaden paid the said promissory note set forth in plaintiffs' first cause of action, but denies that the sum was paid at maturity, or at any time prior to the 3d day of July, 1918, and denies that the sum of \$30.00 was the amount paid by Cascaden as interest thereon, and denies that any other sum was paid as interest thereon except the sum of \$33.00 to said Farmers' Bank of Fairbanks. And the defendant also denies that the said David H. Cascaden was not repaid the principal sum named in the promissory note set forth in plaintiffs' first cause of action, and denies that said David Cascaden was not paid the amount of interest which he paid upon said note, and further denies that there is anything due, owing or unpaid from plaintiff to defendant by or on account of said promissory note or interest.

And defendant further, in his second and affirmative defense to the first cause of action, alleges that the promissory note set forth in plaintiffs' first cause of action was, on the 3d day of July, 1918, paid in full by the Fairbanks Beverage Company by the execution of a promissory note in the sum of \$3,033.00 in favor of David H. Cascaden and the mortgage securing the payment of the same, which said mortgage was filed for record in the office of the recorder of the Fairbanks Precinct, Fourth Division of Alaska, on the 6th day of July, 1918, as was and is now recorded in Volume 8 of Real Estate Mortgages, at page 546, et seq., thereof, and indexed in Volume 3 of Chattel Mortgage Indexes



as [128] Instrument No. 51,538, and that the same was accepted as payment in full by said Cascaden, and that the note sued upon by plaintiffs in the first cause of action was then and there delivered up and surrendered by said Cascaden.

As answer to the second cause of action set up by plaintiffs, defendant admits that on or about the 25th day of June, 1918, he made, executed and delivered to David Cascaden the promissory note set forth and described in plaintiffs' second cause of action, and denies that the same has not been paid and that there is anything now due, either of principal or interest, to plaintiffs on account thereof.

And for a second and affirmative defense to the matters and things set forth in the second cause of action of plaintiffs, and as a counterclaim thereto, defendant alleges:

That on the 5th day of February, 1918, the plaintiff Cascaden together with one D. Petree, for a valuable consideration, made, executed, and delivered to him a certain promissory note in writing for the sum of \$2,000.00, and interest at the rate of one per cent per month until paid, dated at Fairbanks, Alaska, February 5, 1918, and due July 1st, 1918, a copy of which said note is set forth in defendant's second and affirmative defense to plaintiffs' second cause of action. And further claims that no part of said sum of \$2,000.00 has been paid either by the plaintiff Cascaden or by David Petree to defendant, and that no part of the interest due thereon has been paid by plain-



tiff or by said Petree to the defendant, and that the whole sum of \$2,000.00, together with interest thereon at the rate of one per cent per month from the 5th day of February, 1918, is now due and owing. And further claims that the defendant Weber has been compelled to and has employed an attorney to defend this action and to collect the amount due on said last-mentioned promissory note, and that a reasonable attorney's fee therefor is the sum of \$350.00. [129] That defendant therefore asks for judgment against the plaintiff for interest on the sum of \$2,000.00 at the rate of one per cent per month from the 5th day of February, 1918, to the 25th day of June, 1918, together with interest at the rate of one per cent per month on \$1,500.00 from the 25th day of June, 1918, and for the said sum of \$1,500.00; and further, for the sum of \$350.00 attorney's fees.

Plaintiff replies to the amended answer of defendant, and to the further second and affirmative defense to the first cause of action, as found on page 2 of defendant's answer, as follows:

First, plaintiffs admit that on or about the 3d day of July, 1918, the Fairbanks Beverage Company executed and delivered to plaintiff Casca den a promissory note in the sum of \$3,033.00 and a mortgage securing the same, which mortgage was filed as alleged in said so-called second and affirmative defense.

And, second, denies that said mortgage was accepted as payment in full of said note described in plaintiffs' complaint or as a payment thereon.

And, third, denies that said promissory note sued on by the plaintiff and described in plaintiff's complaint, paragraph 4, was delivered up and surrendered by said Cascaden.

And, fourth, denies that the said note and mortgage were accepted in full payment, or payment at all, of said indebtedness described in plaintiffs' complaint, or that it was accepted otherwise than as security for the amount due to said David H. Cascaden, and plaintiffs deny that said note, or any part thereof, has ever been paid.

And for a further affirmative reply to the said second and affirmative defense to plaintiffs' first cause of action plaintiff alleges:

First, that said mortgage described in said second affirmative defense of defendant was a second mortgage on said property [130] situated in Fairbanks, and that said mortgage has never been paid, and that on a foreclosure of the first mortgage on said property described in said mortgage given by the Fairbanks Beverage Company to said Cascaden, plaintiff, for \$3,033.00, said property did not sell for sufficient to pay the first mortgage, and that, therefore, the second mortgage remains wholly unpaid.

And plaintiffs further replying to the second and affirmative defense to the matters and things set forth in the second cause of action in plaintiffs' complaint, and as a counterclaim against David H. Cascaden, plaintiffs herein deny, first the allegations of paragraph 1 of said so-called further second and affirmative defense; and, second, admit

that no part of the promissory note or interest in favor of defendant Weber, signed by Petree and Cascaden, as set forth in the further second and affirmative defense of defendant, has been paid, and denies that defendant has been compelled to and has employed an attorney to defend this action and to collect said promissory note, with interest; and further denies that the reasonable attorney's fee for such services is the sum of \$350.00.

And further replying affirmatively to said so-called further second and affirmative defense to plaintiff's second cause of action, plaintiff alleges as follows, to wit:

That the promissory note described in paragraph 1 of said so-called second affirmative defense set forth in the amended answer in paragraph 3 was, at the time of the making thereof, and ever since has been, without consideration, and that neither the plaintiff Cascaden nor David Petree was or is liable to defendant in any sum whatsoever by reason of the making of said note.

And for a second affirmative reply to the matters and things set forth in said second and affirmative defense to plaintiffs' second cause of action plaintiff alleges:

That prior to the 5th day of February, 1918, Cascaden, Weber, [131] and Petree had purchased from one Allberg certain property in the town of Fairbanks, and that the purchasers paid on account of the purchase price the sum of approximately \$5,000.00, and there remained due to said Allberg approximately the sum of \$3,000.00.

Second, that Weber, the defendant herein, fearing that he might be compelled to pay the balance of the said purchase price of said property to Allberg in the absence of Cascaden and Petree, and as a protection in the event that he should be compelled to make such payment, procured from Cascaden and Petree the promissory note described in paragraph 3 of defendant's answer, which said promissory note was to be paid by said Cascaden and Petree to Weber in the event that Weber was compelled to pay to Allberg the balance of the purchase price on said property purchased from Allberg described above, namely \$3,000.00. That said note was intended to reimburse Weber in the event he paid the proportion of the balance of the purchase price properly payable by Cascaden and Petree. And further, that Weber never paid to Allberg the balance of the said purchase price of said property, and that the consideration of said note failed, and that the same is without consideration and void, and that plaintiff Cascaden is not now and never has been liable for the payment of any part or portion thereof.

And plaintiff prays that defendant take nothing by his so-called affirmative defenses, and that plaintiffs have judgment as prayed for in the complaint.

2.

In this case, as in all civil cases, the jury and the Judge of this court each have separate functions to perform. It is your duty to hear all the evidence, all of which is addressed to you, and thereupon to decide and determine the questions of

fact arising from the evidence; and it is the duty of the Judge of this court to decide all questions of law involved in the trial [132] of the case, and the law makes it your duty to accept as law what is laid down as such by the Court in these instructions.

## 3.

You are instructed that you are the sole judges of all questions of fact, and of the effect of the evidence, and the weight to be given to the testimony of the witnesses; but your power in this respect is not arbitrary, but is to be exercised by you with legal discretion and in subordination to the rules of evidence laid down in these instructions.

## 4.

In determining the credit you will give to a witness, and the weight and value you will attach to his testimony, you should take into consideration the conduct and appearance of the witness upon the stand, the interest he has, if any, in the result of the trial, the motive he has in testifying, if any is shown, his relation or feeling for or against the defendant, the probability or improbability of the statements of such witness, and the opportunity he had to observe and to be informed as to the matters respecting which he gave testimony before you, and the inclination he evinced, in your judgment, to speak the truth, or otherwise, as to matters within the knowledge of such witness.

It is your duty to give to the testimony of each and all of the witnesses such credit as you con-



sider their testimony justly entitled to receive, and in so doing you should not regard the remarks or expressions of counsel unless the same are in conformity with the facts proved or are reasonably deducible from such facts and the law as given in these instructions.

## 5.

Evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict, and, therefore, if the weaker and less satisfactory evidence is offered [133] when it appears that stronger and more satisfactory was within the power of the party, the evidence offered should be viewed with distrust.

## 6.

You are instructed that in considering the evidence in this case you are not bound to find a verdict in conformity with the declaration or testimony of any number of witnesses, when their evidence does not produce conviction in your minds, against a lesser number of witnesses, or other evidence, which is satisfying to your minds.

The weight of the evidence does not depend so much upon the number of witnesses who testify as upon the character and probability of the facts stated by them, and upon the character and reasonableness of their testimony and the opportunity the witnesses had for seeing and knowing the facts stated by them.

## 7.

You are instructed that in all civil cases the



affirmative of the issue shall be proved, and when the evidence is contradictory the findings shall be according to the preponderance of the evidence, by which is meant the greater weight of the evidence; that is to say, that before the plaintiff can recover, the plaintiff must prove all the allegations of the first cause of action by a preponderance of the evidence, and if the plaintiff fails to do so, or if the evidence is evenly balanced, your verdict should be for the defendant on the first cause of action of plaintiff set up in plaintiff's complaint.

## 8.

You are instructed that the defendant George Weber, as a counterclaim, claims that plaintiff David H. Cascaden is indebted to him in the sum of \$2,000.00, together with interest thereon, on a promissory note signed by David H. Cascaden, plaintiff in [134] this case, and David Petree, dated February 5, 1918, less the sum of \$500.00, with interest, on a promissory note given to David H. Cascaden by defendant George Weber on the 25th day of June, 1918, which last-mentioned note for \$500.00 is set up as the second cause of action in plaintiff's complaint. And you are instructed that there being no competent evidence introduced by the plaintiff in opposition to said claim, the Court now instructs you that you should find for the defendant George Weber with reference to said counterclaim; that is to say, for the sum of \$1,500.00 principal, with interest on the sum of \$2,000.00 at the rate of one per cent per month from the 5th day of February, 1918, to the 25th

day of June, 1918, together with interest at the rate of one per cent per month on the sum of \$1,500.00 from the 25th day of June, 1918, to this date; and also for such further sum as you deem reasonable for attorney's fees.

## 9.

You are instructed that by reason of the foregoing instruction there is left for your consideration to be determined by you whether or not the plaintiff should prevail as to the first cause of action set forth in the complaint, in which the plaintiff alleges that the defendant George Weber is indebted to plaintiff in the sum of \$3,000.00 and interest on a certain promissory note dated the 31st day of October, 1917, which is set forth in paragraph 4 of plaintiffs' complaint, and which it is alleged that the plaintiff David H. Cascaden paid on the 25th day of June, 1918, in full, together with \$30.00 interest thereon, and which it is alleged that the defendant Weber has not repaid to the plaintiff, and that the whole of said sum of \$3,030.00, with interest at the rate of one per cent per month from the 25th day of June, 1918, is now due and unpaid; and also for the sum of \$600.00 attorney's fee in instituting and conducting this [135] litigation with reference to this first cause of action; and also for the sum of \$150.00 for instituting and maintaining the litigation with reference to plaintiffs' second cause of action on the note for \$500.00, with interest, the principal of which said note and interest is admitted by the defendant to be due to the plaintiff.

## 10.

You are instructed that if you find from a preponderance of the evidence in the case that the amount of said note and interest is now due, owing and unpaid from the defendant George Weber to the plaintiff, your verdict should be in favor of the plaintiff on his first cause of action for the full amount of said note and interest, and attorney's fees prayed for; and you are instructed that the amount of said attorney's fees which you allow should include a reasonable amount for both causes of action set forth in the complaint.

## 11.

You are instructed that the defendant admits the execution by George Weber, Dave Petree and D. H. Cascaden of the promissory note described in plaintiffs' first cause of action, and defendant also admits that D. H. Cascaden paid said note to the Farmers' Bank of Fairbanks, and therefore plaintiffs are not required to introduce any evidence as to the execution and delivery of the note or the payment thereof by David H. Cascaden. Defendant alleges that the amount of the note was repaid to Cascaden by the execution of a note and mortgage from the Fairbanks Beverage Company to Cascaden, to secure the amount that Cascaden paid to the Farmers' Bank of Fairbanks in the sum alleged to be \$3,033.00. Defendant also alleges that said Cascaden accepted the mortgage as full payment of the amount due to him by reason of his having to pay said sum to the Farmers' Bank. Defendant also alleges that the original note to

the Farmers' Bank, paid by David H. [136] Cascaden, was surrendered and canceled. You are therefore instructed that the burden of proof is on the defendant to prove what he has alleged, and unless he does prove it to your satisfaction by a preponderance of evidence, your verdict must be for the plaintiffs on said first cause of action.

## 12.

You are instructed that an accommodation maker of a note is one who signs a note as principal to enable other signers of the note to secure money thereon, and if an accommodation maker is compelled to pay the note he is entitled to recover from any or all the signers on said note for whose use the money was secured the entire amount that he was compelled to pay thereon.

## 13.

You are further instructed that if one of the signers of a note is compelled to pay the whole note, any or all of the other signers of the note are liable for the repayment to the party who paid the note of the amount that was paid on the note over and above what was for the personal use or benefit of the person who paid the note; and if you are satisfied by a fair preponderance of evidence that no part of the money represented by the \$3,000.00 note given to the Farmers' Bank of Fairbanks was for the use and benefit of David H. Cascaden, then you are instructed that the defendant would be liable to David H. Cascaden and to his guardian for the entire amount that said David H. Cascaden was compelled to pay to the

Farmers' Bank of Fairbanks, unless you find that said indebtedness of Weber and Petree was transferred to the Fairbanks Beverage Company by and with the consent of said David H. Cascaden.

## 14.

You are instructed that the defendant admits that David H. Cascaden did pay the sum of \$3,030.00, being the principal and interest due upon said note, on the 25th day of June, 1918, but [137] said defendant claims that after said David H. Cascaden paid the amount of said note and interest he agreed to accept in payment of said sum the note of the Fairbanks Beverage Company, Incorporated, in which said company George Weber, David Petree and David H. Cascaden were the principal stockholders, which said note of said company was to be secured by a mortgage upon certain property in the town of Fairbanks, and that in pursuance of such agreement that the note of said Fairbanks Beverage Company and said mortgage agreed upon were made, executed and delivered to the said David H. Cascaden, and that he accepted the same as repayment of the amount expended by him in taking up the note of Weber and Petree to the Farmers' Bank of Fairbanks; and if you find and believe from a preponderance of the evidence that this contention is true your verdict should be in favor of the defendant Weber as to plaintiffs' first cause of action.

## 15.

You are instructed that if David H. Cascaden paid the note set forth in plaintiffs' first cause of action



to the Farmers' Bank of Fairbanks and took a note for \$3,033.00 and a mortgage from the Fairbanks Beverage Company, this act on the part of Cascaden constituted a payment of the promissory note set forth in plaintiffs' first cause of action; and the question as to whether or not the mortgage so taken was a first or second mortgage is immaterial, and also as to whether or not said note of \$3,033.00 was or was not paid by the Fairbanks Beverage Company is immaterial, because the debt was changed by the aforesaid transaction from David Petree and defendant to the Fairbanks Beverage Company by express agreement with plaintiff Cascaden; and in that event the defendant Weber was released entirely from any obligations on account of said note set forth in plaintiffs' first cause of action, and the said Cascaden can look only to the Fairbanks Beverage Company for payment of the said [138] note for \$3,033.00, and the defendant Weber would not be responsible for the payment of the same, or any part thereof, and your verdict should be for the defendant on plaintiffs' first cause of action.

## 16.

You are instructed that there is no evidence in this case whatever that would tend to prove that the note for \$3,033.00, executed by the Fairbanks Beverage Company in favor of plaintiff David H. Cascaden, was given as additional security for the payment of said promissory note marked Plaintiffs' Exhibit "A"; and there is nothing contained in the complaint of plaintiffs by which competent evi-



dence could be introduced to show that said note for \$3,033.00, executed by the Fairbanks Beverage Company to the plaintiff David H. Cascaden, was given as additional security for the payment of said note of \$3,000.00, marked Plaintiffs' Exhibit "A"; and the jury are therefore instructed that they would not be warranted in considering said note of \$3,033.00 as additional security for the payment of said promissory note marked Plaintiffs' Exhibit "A."

## 17.

You are further instructed that whether you find for the plaintiff or defendant you should ascertain and determine, and insert in either verdict, the amount of the attorney's fee to which either the plaintiff or defendant may be entitled, as the case may be.

## 18.

(Not given.)

## 19.

The jury should endeavor to agree upon a verdict, and you should consider these instructions as a whole and not disconnectedly. [139]

In conformity with the law I have prepared two forms of verdict, which you will take with you into your jury-room, and when you shall have unanimously agreed upon your verdict you will sign, by your foreman, that form upon which you have agreed and return it into court as your verdict, and the other form you will destroy.

The forms are:

(1) Find and return a verdict in favor of the

plaintiff and against the defendant, and that plaintiff is entitled to recover from the defendant the sum of \$3033.00, with interest at the rate of one per cent per month from the 25th day of June, 1918, together with an attorney's fee on the first cause of action in the sum of \$—— and on the second cause of action in the sum of \$——, less the sum of \$1500.00 principal with interest on \$2000.00 at the rate of one per cent per month from the 5th day of February, 1918, to the 25th day of June, 1918, together with interest at the rate of one per cent per month on \$1500.00 from the 25th day of June, 1918, together with the sum of \$—— as a reasonable attorney's fee.

(2) Find and return a verdict in favor of the defendant and against the plaintiff, and that defendant is entitled to recover from the plaintiff the sum of \$1500.00 principal, with interest on \$2000.00 at the rate of one per cent per month from the 5th day of February, 1918, to the 25th day of June, 1918, together with interest at the rate of one per cent per month on \$1500.00 from the 25th day of June, 1918, to the date of judgment, and for the sum of \$—— attorney's fees.

With these forms of verdict I now hand you the written instructions which I have just read to you for your guidance, the pleadings in the case, consisting of the complaint, answer and reply, and the documentary exhibits introduced in evidence in [140] this case, and these you will return into Court with your verdict.

Dated at Fairbanks, Alaska, this 2d day of April, 1923.

CECIL H. CLEGG,  
District Judge. [141]

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That plaintiffs requested the Court, in addition to the instructions already given, to instruct the jury as follows, to wit: [142]

[Title of Court and Cause.]

**Request for Instructions.**

To the Hon. CECIL H. CLEGG, Judge of the  
Above-entitled Court:

Come now the plaintiffs above named and request this Court to instruct the Jury in writing and that the Court give the following instructions, to wit: [143]

1.

You are instructed that the defendant admits in his pleadings the making, execution, and delivery of the promissory note described in plaintiffs' second cause of action, and unless you are satisfied that the defendant has proved, by a preponderance of evidence, that David H. Cascaden, together with Dave Petree, is indebted to defendant on the promissory note described in defendant's answer, your verdict must be for the defendants on their second cause of action set forth in their complaint. [144]

2.

You are instructed that, in the first instance, the plaintiffs were obliged to prove the allegations of

their complaint by preponderance of evidence, and when that was done, then the burden shifted to the defendant to disprove plaintiffs' case and to prove the affirmative matter set forth in his answer by a preponderance of evidence, and that, so far as the counterclaim set forth in the defendant's answer is concerned, he becomes the plaintiff and the burden of proof shifts to him and he must prove the allegations of said answer as regards the counterclaim by a preponderance of evidence. [145]

## 6.

You are instructed that the plaintiffs in this action claim that the note for \$2,000.00, given by David Petree and David H. Cascaden to George Weber, was given to protect the defendant from loss if he was compelled to pay to one Allberg the sum of \$3000.00 alleged to have been due to said Allberg, and if you are satisfied from the evidence that that was the purpose for which said note was given, then you are instructed that if said Weber did not pay said Allberg the sum of \$3000.00, then said note was without consideration and neither of the makers thereof would be liable to said Weber for any part thereof. And if you are satisfied that said note was given for the purpose above set forth, then the burden is on the defendant to show that said payment was made to said Allberg, or some one for his use and benefit, prior to the time of the filing of defendant's amended answer in this cause. [146]

## 7.

You are instructed that there must be a good and valuable consideration for every contract or said

contract can not be enforced, and you are further instructed that if the consideration for a contract is the performance by the person for whose benefit said contract is made of some act in the future, and he fails to perform said act or acts, then the consideration for said contract is said to have failed and said contract cannot be enforced. [147]

## 8.

The plaintiffs have pleaded, in their amended reply on file herein, that the note described in defendant's amended answer was, and is, without consideration, and you are instructed that, if you find from the evidence that, at the time David H. Cascaden signed said note, he was not indebted to George Weber and was under no obligation to execute said note, then you should find against the defendant on his counterclaim. [148]

## 9.

You are instructed that one of the issues in this cause is as to whether or not there was a good and valuable consideration for the note described in defendant's amended answer, the plaintiffs herein having denied that there was any consideration for said note so far as David H. Cascaden is concerned, and, under the rules of evidence, the burden is placed upon the defendant to prove, by a preponderance of the evidence, that there was a good and valuable consideration for the signing of said note by David H. Cascaden, and if the defendant fails to prove said consideration, by a fair preponderance of evidence, then he cannot prevail upon his counterclaim set forth in his amended answer, and your



verdict must be against said defendant on said counterclaim. [149]

That the Court then and there refused to give said requested instructions to the jury, to which refusal plaintiffs then and there excepted, and said exception was allowed.

That, prior to the retirement of said jury and in the presence of said jury and after they had been instructed by the Court, plaintiffs made the following objections to the instructions already given to said jury by the Court, and excepted to his refusal to give their proposed instructions, as follows, to wit: [150]

Mr. CLARK.—Plaintiffs except to instruction No. 8 given by the Court to the jury on the ground that the Court takes the matter entirely out of the hands of the jury and passes upon matters of fact that should be passed upon by the jury, and that it is contrary to law.

The COURT.—Exception allowed.

Mr. CLARK.—Plaintiffs except to instruction No. 9 given by the Court to the jury for the reason that it is predicated upon the eighth instruction, to which we have heretofore excepted, in that it limits the findings of the jury simply to matters contained in plaintiffs' complaint, having already instructed the jury to bring in a verdict in favor of the defendant upon his counterclaim.

The COURT.—Exception allowed.

Mr. CLARK.—Plaintiffs except to the last portion of instruction No. 13 given by the Court to the jury wherein it is recited as follows:



“Unless you find that said indebtedness of Weber and Petrie was transferred to the Fairbanks Beverage Company by and with the consent of said David H. Cascaden”

as said instruction is not pertinent to the issue, and there is no evidence whatsoever as to the assuming of any indebtedness by the Fairbanks Beverage Company of Petrie and Weber, and that it is contrary to law.

The COURT.—Exception allowed.

Mr. CLARK.—Plaintiffs except to instruction No. 15 given by the Court to the jury, as the Court invades the province of the jury and passes upon facts that should be left to the jury, virtually instructs them on questions of fact and not on questions of law, and is [151] contrary to law.

The COURT.—Exception allowed.

Mr. CLARK.—Plaintiffs except to instruction No. 16 given by the Court to the jury on the ground that it is contrary to law and invades the province of the jury.

The COURT.—Exception allowed.

Mr. CLARK.—Plaintiffs except to the refusal of the Court to give the proposed instructions submitted by plaintiffs numbered 1, 2, 3, 6, 7, 8 and 9.

The COURT.—Exceptions allowed. [152]

That the Court then and there allowed said exceptions.

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That, thereafter, said jury retired to consider their verdict, and on the 2d day of April, 1923, duly

returned into court with their verdict, which was in the words and figures following, to wit: [153]

[Title of Court and Cause.]

### Verdict.

We the jury, duly impaneled and sworn to try, hear and determine the issues in the above-entitled cause, do find and return a verdict in favor of the defendant and against the plaintiffs, and that defendant is entitled to recover from plaintiffs the sum of \$1,500.00 principal with interest on \$2,000.00 at the rate of one per cent per month from the 5th day of February, 1918, to the 25th day of June, 1918, together with interest at the rate of one per cent per month on \$1,500.00 from the 25th day of June, 1918, to the date of judgment, and for the sum of \$250.00 attorneys' fees.

Dated at Fairbanks, Alaska, April 2d, 1923.

F. M. DUNHAM,

Foreman.

Entered in Court Journal No. 15, page 706.

[Endorsed]: Filed Apr. 2, 1923. Rob't W. Taylor, Clerk. By Frank O'Farrell, Deputy.  
[154]

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That, thereafter and within the time allowed by law, the plaintiffs filed a motion for judgment notwithstanding the verdict, which was as follows, to wit: [155]

[Title of Court and Cause.]

**Motion for Judgment Notwithstanding Verdict.**

Come now the plaintiffs in the above-entitled action and move this Court for the entry of a judgment against the defendant and in favor of the plaintiffs in the above-entitled action, notwithstanding the verdict rendered by the jury which tried said cause on the 2d day of April, 1923, said judgment to be based on plaintiffs' second cause of action and to be for the sum of \$500.00 together with interest thereon at the rate of one per cent a month from the 25th day of June, 1918, together with an attorney's fee in such sum as to the Court shall seem reasonable.

This motion is based on the following grounds, to wit, that it conclusively appears, from the evidence in this cause and as admitted by the amended answer of defendant on file herein, that the note therein described was executed by the defendant and delivered to the plaintiff on or about the day therein specified and that said note has never been paid; that it further conclusively appears from the evidence that the note set forth in defendant's amended answer as a counterclaim and setoff against the claim of plaintiffs was absolutely without any consideration whatsoever and was void; that, from all the evidence introduced in said cause, it appears that the said defendant is [156] indebted to the plaintiffs for the amount of the note described in the second cause of action in plaintiffs'

complaint on file herein, and that there is no valid or legal setoff or counterclaim existing in behalf of or in favor of the defendant above named, and that the evidence is undisputed that there was no consideration for the note described in defendant's amended answer on file herein.

Dated at Fairbanks, Alaska, this 4th day of April, 1923.

JOHN A. CLARK,  
Attorney for Plaintiffs.

[Endorsed]: Filed Apr. 4, 1922. Rob't W. Taylor, Clerk. By Grace Fisher, Deputy. [157]

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That, thereafter, said Court overruled said motion, to which order plaintiffs then and there excepted, and said exception was allowed.

That, subsequent to the rendition of said verdict and within the time prescribed by law, plaintiffs filed a motion for a new trial, which was in the words and figures following, to wit: [158]

[Title of Court and Cause.]

### **Motion for a New Trial.**

Come now the plaintiffs above named and without waiving their motion heretofore filed for a judgment in favor of plaintiffs notwithstanding the verdict of the jury in favor of the defendant and still insisting on said motion, but in the event said motion is overruled, do now move this Court for an order setting aside the verdict of the jury given, made, rendered, and entered in the above-entitled

cause on the 2d day of April, 1923, and giving and granting to those plaintiffs a new trial of said action, on the following grounds, to wit:

I.

Insufficiency of the evidence to justify the verdict and that it is against law in the following particulars, to wit:

(1) That the evidence introduced in said cause shows that there was absolutely no consideration whatsoever for the execution by David H. Cascaden of the promissory note payable to the defendant, described in defendant's amended answer, and that, by reason thereof, said promissory note is not a valid setoff or counterclaim against the plaintiffs, and for the further reason that it appears by the admissions of the pleadings and by the evidence in said cause that defendant is indebted to plaintiffs in the sum of five hundred dollars, with interest [159] thereon at the rate of one per cent a month from the 25th day of June, 1918, together with an attorney's fee to be fixed by the Court. and that the verdict rendered by the jury in said cause is against law and against the evidence introduced in said cause.

(2) On the further ground that it conclusively appears from the evidence that the promissory note described in plaintiff's first cause of action represented money, borrowed by the defendant and David Petree, and that said David H. Cascaden was not responsible or liable for any part or portion thereof; that he was compelled to pay said note; and that said note has never been repaid to him.

(3) For the further reason that it does not appear from the evidence in said cause that the Fairbanks Beverage Company ever agreed to assume, or assumed, the indebtedness of David Petree and George Weber, and it does not appear that David H. Cascaden ever accepted the Fairbanks Beverage Company as a debtor in lieu of David Petree and George Weber, or ever released said Petree and said Weber from their liability to him by reason of his being compelled to pay the promissory note described in plaintiffs' first cause of action, and it conclusively appears from the evidence that said Cascaden has never been repaid the amount he was compelled to pay to the Farmers' Bank in taking up the said note of Petree and Weber; that said note still remains unpaid and is due from defendant to plaintiffs herein; and that said verdict is contrary to law and is not justified by the evidence in said cause.

## II.

Errors in law occurring at the trial and excepted to by the plaintiffs herein, as follows:

Errors committed by the Court in admitting evidence on the [160] trial of said cause, excepted to by the plaintiffs at the time, and which exceptions were allowed, to wit:

(1) The Court erred in giving certain instructions excepted to by the plaintiffs, in the presence of the jury and before they retired to consider their verdict in said cause, which said exceptions were noted by the Court, and exceptions allowed.

(2) The Court erred in giving Instruction No. 8, for the reason that said instruction is contrary to



law and the Court attempts to instruct on the facts in said cause and to decide questions of which the jury are the sole judges, and that the Court completely ignores the special defenses made by the plaintiffs in said action of lack of consideration.

(3) The Court erred in giving Instruction No. 9, as it is predicated on Instruction No. 8, the error in which is hereinabove set forth.

(4) The Court erred in submitting to the jury the question of attorney's fee, as that is a matter solely within the province of the Court.

(5) The Court erred in Instruction No. 13, prepared by plaintiffs herein, in adding thereto that part thereof which reads as follows: "Unless you find that said indebtedness of Weber and Petree was transferred to the Fairbanks Beverage Company by and with the consent of David H. Cascaden," for the reason that said addition is inconsistent with the remainder of said instruction, is contrary to law, and completely ignores the proposition that the mere acceptance of said *said* indebtedness by the Fairbanks Beverage Company would not relieve the original debtors except by the express consent of David H. Cascaden, and that the said quoted part of said instruction is indefinite and ambiguous in that indebtedness cannot be transferred from one to another without the consent of the party that is presumed to assume said indebtedness. [161]

(6) The Court erred in Instruction No. 15, in that it invaded the province of the jury and instructed on questions of fact which are solely within the province of the jury; that said instruction is

contrary to law and is a mis-statement of the law, in that it makes the acceptance of a note and mortgage by Cascaden from the Fairbanks Beverage Company conclusive evidence that he released Weber and Petree from any liability, when said fact is purely a matter for the jury to determine; the Court further invades the province of the jury when he directs the jury that the acceptance of a note and mortgage from the Beverage Company completely changed the indebtedness from Petree and Weber to the Beverage Company, ignoring the proposition that a person may take security for indebtedness from others without waiving his right to proceed against the original debtors. The Court also states in said instruction that the defendant Weber was entirely released from any obligations on account of the note set forth in plaintiffs' first cause of action when Cascaden accepted the mortgage from the Beverage Company; which is entirely a question of fact, one of the issues in said cause, made so by the pleadings, and should be determined by the jury and no one else; and said instruction was in effect an instruction on the evidence in the cause, and completely disregarded the issues raised by the pleadings in said cause.

(7) The Court erred in giving Instruction No. 16, in that he invaded the province of the jury in attempting to pass on questions of fact, for the reason that the question as to whether or not said note was accepted from the Beverage Company as additional security to the note already held by Cascaden and by him paid to the Farmers' Bank,

is purely a question of fact that should be left to the jury for their consideration.

(8) The Court erred in giving Instruction No. 17, in that [162] the question of attorney's fee was not submitted to the jury and should not have been considered by them, as the amount of attorney's fee should be determined by the Court and no one else.

(9) The Court erred in refusing to give proposed Instruction No. 1 submitted by plaintiffs.

(10) The Court erred in refusing to give proposed Instruction No. 2 submitted by plaintiffs.

(11) The Court erred in adding to proposed Instruction No. 4 submitted by plaintiffs, said addition being contained in Instruction No. 13.

(12) The Court erred in refusing to give proposed instruction No. 6 submitted by plaintiffs, as that was one of the issues raised by said pleadings and the jury should have been instructed on said proposition.

(13) The Court erred in refusing to give proposed Instruction No. 7 submitted by plaintiffs, as it is a correct statement of the law and one of the issues in said cause.

(14) The Court erred in refusing to give proposed Instruction No. 8 submitted by plaintiffs, in that it is absolutely within the issues in said cause, made so by the pleadings, and the plaintiffs were entitled to have the jury instructed thereon.

(15) The Court erred in refusing to give proposed Instruction No. 9 submitted by plaintiffs, for the reason that it is an instruction on the issues involved in said cause and the plaintiffs are entitled

to have said matter submitted to the jury for their determination.

(16) The Court erred in practically directing a verdict in favor of defendant and against plaintiffs, on plaintiffs' counterclaim in said cause, as said action was not justified by the law or the evidence.

(17) The Court erred in practically instructing the jury to find against plaintiffs on their first cause of action, for [163] the reason that said instruction was not justified by the evidence and was contrary to law.

(18) The Court erred in not sustaining plaintiffs' exceptions to instructions given, said objections being made to the Court and noted by the reporter in the presence of the jury prior to the time said cause was given to the jury for their consideration.

(19) The Court erred in overruling and refusing plaintiffs' motion for a directed verdict, filed at the close of all the evidence in said cause and before the arguments.

(20) The Court erred in refusing to permit plaintiffs to file a second amended reply to conform to the proofs adduced in said cause.

### III.

Upon the ground that plaintiffs were prevented from having a fair trial by reason of the instructions given by the Court, which ignored the defenses interposed by plaintiffs to the counterclaim of the defendant and by the acts of the Court in instructing on facts and invading the province of the jury.

Dated at Fairbanks, Alaska, this 4th day of April 1923.

JOHN A. CLARK,  
Attorney for Plaintiffs.

[Endorsed]: Filed April 4, 1923. Rob't W. Taylor, Clerk. By Grace Fisher, Deputy. [164]

That, thereafter and after argument, the Court overruled said motion for a new trial, to which order plaintiffs then and there excepted, and said exception was allowed.

And now, in furtherance of justice and that right may be done, the plaintiffs, within the time allowed by law and the orders of this Court, extending plaintiffs' time within which to prepare, serve, and file their bill of exceptions in this cause, herewith present the foregoing bill of exceptions in the above-entitled cause, and pray that it may be settled, signed, and allowed by the Judge of this Court, in the manner prescribed by law.

JOHN A. CLARK,  
Attorney for Plaintiffs.

Due service of the within and foregoing bill of exceptions admitted this 10th day of May, A. D. one thousand nine hundred twenty-three.

R. F. ROTH,  
J. E. RYDEN,  
Attorneys for Defendant. [165]



United States of America,  
Territory of Alaska,—ss.

**Certificate to Bill of Exceptions.**

I hereby certify that the above and foregoing contains a full, true, and accurate transcript of all the oral testimony and documentary evidence introduced at the trial of the above-entitled action, upon the issues joined between the plaintiffs above named and the defendant above named, as well as the complete charge of the Court to the jury; that it includes all exceptions taken throughout the trial to the admission and rejection of evidence, also the exceptions taken to the instructions of the Court to the jury, the exceptions to the refusal of the Court to give certain special instructions tendered by plaintiffs, as set forth in said bill of exceptions, the motion for a new trial, and all other matters and things occurring thereat, and not otherwise of record;

And I now sign, seal, and allow the same as and for a true and correct bill of exceptions of all matters contained therein, and order the same to be refiled by the clerk of this Court, and when so filed to be and become a part of the record in this cause.

Dated at Fairbanks, Alaska, on this, the fourth day of June, A. D. one thousand nine hundred twenty-three.

CECIL H. CLEGG,  
District Judge.

Entered in Court Journal No. 15, page 753.



[Endorsed]: Lodged May 10, 1923. Rob't. W. Taylor, Clerk. By Frank O'Farrell, Deputy. Jun. 4, 1923, Rob't. W. Taylor, Clerk. By Grace Fisher, Deputy. [166]

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[Title of Court and Cause.]

**Judgment on Verdict.**

On the 31st day of March, 1923, this action came on regularly for trial. The said parties appeared by their attorneys. A jury of twelve persons were regularly empaneled and sworn to try said action. Witnesses on the part of plaintiffs and defendant were sworn and examined. After hearing evidence, the argument of counsel and instructions of the Court, the jury retired to consider their verdict, and subsequently, on the 2d day of April, 1923, returned into court and, being called, answered to their names and say they find a verdict for the defendant.

WHEREFORE, by virtue of the law and by reason of the premises aforesaid,

IT IS ORDERED AND ADJUDGED that said defendant have and recover from said plaintiffs the sum of \$1500.00 principal, together with interest on \$2000.00 from the 5th day of February, 1918, to the 25th day of June, 1918, at the rate of one per cent per month, together with interest on \$1500.00 at the rate of one per cent per month from the 25th day of June, 1918, to the 31st day of March, 1923, together with [167] said defendant's costs and disbursements incurred in this action taxed at the sum of \$29.60.

Judgment rendered April 11, 1923.

Dated at Fairbanks, Alaska, this 18th day of April, 1923.

CECIL H. CLEGG,  
District Judge.

Entered in Court Journal No. 15, page 725.

[Endorsed]: Filed Apr. 18, 1923. Rob't. W. Taylor, Clerk. By Grace Fisher, Deputy. [168]

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[Title of Court and Cause.]

### **Assignment of Error.**

Come now the plaintiffs in the above-entitled cause, being the plaintiffs in error, and assign the following error as having been committed by the above-named Court on the trial of the above-entitled cause, which said error said plaintiffs intend to, and do, rely upon on plaintiffs' writ of error to be prosecuted to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California.

#### **Pleadings and Procedure.**

(1) The Court erred in refusing to direct the jury engaged in the trial of the above-entitled cause to bring in a verdict in favor of the plaintiffs upon plaintiffs' second cause of action set forth in their complaint on file herein, said motion being made after all the evidence had been introduced in said cause, which said motion was in writing and duly filed in said cause and is a part of the records thereof.

#### **Plaintiffs' Exception No. 1.**

(2) 'The Court erred, at the conclusion of the

trial of said cause and before the argument of counsel, in refusing to permit plaintiffs to file a second amended reply to conform to the proof adduced on the trial of said cause, in the following particulars, to wit: [169]

(a) To amend paragraph III of the first amended reply by changing the wording of section 2 of said paragraph to read as follows: "Replying to paragraph 2 thereof, plaintiffs admit that no part of said promissory note or interest has been paid by plaintiff David H. Cascaden, but deny each and every other matter and thing therein contained."

(b) To amend paragraph IV of said first amended reply so as to set forth therein that the promissory note described in defendant's affirmative answer was, so far as David H. Cascaden was concerned, without consideration, and that plaintiff David H. Cascaden never was, nor is now, liable to the defendant in any sum whatsoever by reason of the making of said note.

(c) To amend section 3 of paragraph V of said first amended reply by adding thereto the following: "That said David H. Cascaden was not liable or responsible for any part or portion of said balance due to said Allberg, and was not under any legal or other obligation to sign said note, and there was no consideration for the signing thereof by said David H. Cascaden."

Plaintiffs' Exception No. 2.

(3) The Court erred in overruling plaintiff's motion to enter a judgment in favor of said plain-

tiffs on their second cause of action set forth in their complaint on file herein notwithstanding the verdict of the jury and in refusing to enter same.

Plaintiffs' Exception No. 3.

(4) The Court erred in overruling plaintiffs' motion for a new trial and in refusing to grant a new trial.

Plaintiffs' Exception No. 4.

(5) The Court erred in entering any judgment in favor of the defendant on the general verdict rendered by said jury and in overruling plaintiffs' objection to the entry of any judgment [170] in favor of the defendant on the verdict so rendered.

Plaintiffs' Exception No. 5.

**Exceptions to Instructions Given and Refused.**

(6) The Court erred in refusing to instruct the jury and in overruling plaintiffs' motion to give to the jury plaintiffs' proposed Instruction No. 1, which is as follows:

"You are instructed that the defendant admits in his pleadings the making, execution, and delivery of the promissory note described in plaintiffs' second cause of action, and unless you are satisfied that the defendant has proved, by a preponderance of evidence, that David H. Cascaden, together with Dave Petree, is indebted to defendant on the promissory note described in defendant's answer, your verdict must be for the plaintiffs on their second cause of action set forth in their complaint."

Plaintiffs' Exception No. 6.

(7) The Court erred in refusing to instruct the jury and in overruling plaintiffs' motion to give to the jury plaintiffs' proposed Instruction No. 2, which is as follows:

"You are instructed that, in the first instance, the plaintiffs were obliged to prove the allegations of their complaint by preponderance of evidence, and when that was done, then the burden shifted to the defendant to disprove plaintiffs' case and to prove the affirmative matter set forth in his answer by a preponderance of evidence, and that, so far as the counterclaim set forth in defendant's answer is concerned, he becomes the plaintiff and the burden of proof shifts to him, and he must prove the allegations of said answer as regards the counterclaim by a preponderance of evidence."

Plaintiffs' Exception No. 7.

(8) The Court erred in adding to plaintiffs' proposed Instruction No. 4, which is the Court's Instruction No. 13, the limitation hereinafter set forth, said proposed instruction being as follows:

"You are further instructed that, if one of the signers of a note is compelled to pay the whole note, any or all of the other signers of the note are liable for the repayment to the party who paid the note of the amount that was paid on the note over and above what was for the personal use or benefit of the person who paid the note, and if you are satisfied, by

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a fair preponderance of evidence, that no part of the money represented by the \$3,000.00 note given to the Farmers' Bank of Fairbanks was for the use and benefit of David H. Cascaden, then you are instructed that the defendant [171] would be liable to David H. Cascaden and to his Guardian for the entire amount that said David H. Cascaden was compelled to pay to the Farmers' Bank of Fairbanks."

To which the Court, on its own motion, added the following:

"Unless you find that said indebtedness of Weber and Petree was transferred to the Fairbanks Beverage Company by and with the consent of said David H. Cascaden."

Plaintiffs' Exception No. 8.

(9) The Court erred in refusing to instruct the jury and in overruling plaintiffs' motion to give to the jury plaintiffs' proposed Instruction No. 6, which was as follows:

"You are instructed that the plaintiffs in this action claim that the note for \$2,000.00 given by David Petree and David H. Cascaden to George Weber, was given to protect the defendant from loss if he was compelled to pay to one Allberg the sum of \$3,000.00 alleged to have been due to said Allberg, and if you are satisfied from the evidence that that was the purpose for which said note was given, then you are instructed that, if said Weber did not pay said Allberg the sum of \$3,000.00, then said note was without consideration, and



neither of the makers thereof would be liable to said Weber for any part thereof. And if you are satisfied that said note was given for the purpose above set forth, then the burden is on the defendant to show that said payment was made to said Allberg, or someone for his use and benefit, prior to the time of the filing of defendant's amended answer in this cause."

Plaintiffs' Exception No. 9.

(10) The Court erred in refusing to instruct the jury and in overruling plaintiffs' motion to give to the jury plaintiffs' proposed Instruction No. 7, which is as follows:

"You are instructed that there must be a good and valuable consideration for every contract or said contract can not be enforced, and you are further instructed that, if the consideration for a contract is the performance by the person for whose benefit said contract is made of some act in the future, and he fails to perform said act or acts, then the consideration for said contract is said to have failed and said contract can not be enforced."

Plaintiffs' Exception No. 10.

(11) The Court erred in refusing to instruct the jury and in overruling plaintiff's motion to give to the jury plaintiffs' proposed Instruction No. 8, which is as follows:

"The plaintiffs have pleaded, in their amended reply on file herein, that the note described in defendant's amended answer was,

and is, without consideration, and you are instructed that, if you find from the evidence that, [172] at the time David H. Cascaden signed said note, he was not indebted to George Weber and was under no obligation to execute said note, then you should find against the defendant on his counterclaim.”

Plaintiffs’ Exception No. 11.

(12) The Court erred in refusing to instruct the jury and in overruling plaintiff’s motion to give to the jury plaintiffs’ proposed Instruction No. 9, which is as follows:

“You are instructed that one of the issues in this cause is as to whether or not there was a good and valuable consideration for the note described in defendant’s amended answer, the plaintiffs herein having denied that there was any consideration for said note so far as David H. Cascaden is concerned, and, under the rules of evidence, the burden is placed upon the defendant to prove, by a preponderance of the evidence, that there was a good and valuable consideration for the signing of said note by David H. Cascaden, and if the defendant fails to prove said consideration, by a fair preponderance of evidence, then he can not prevail upon his counterclaim set forth in his amended answer, and your verdict must be against said defendant on said counterclaim.”

Plaintiffs’ Exception No. 12.

(13) The Court erred in giving to the jury its Instruction No. 8, which was as follows:

“You are instructed that the defendant George Weber, as a counterclaim, claims that that plaintiff David H. Cascaden is indebted to him in the sum of \$2,000.00, together with interest thereon, on a promissory note signed by David H. Cascaden, plaintiff in this case, and David Petree, dated February 5, 1918, less the sum of \$500.00, with interest, on a promissory note given to David H. Cascaden by defendant George Weber on the 25th day of June, 1918, which last mentioned note for \$500.00 is set up as the second cause of action in plaintiffs’ complaint. And you are instructed that there being no competent evidence introduced by the plaintiff in opposition to said claim, the Court now instructs you that you should find for the defendant George Weber with reference to said counterclaim: that is to say, for the sum of \$1500.00 principal, with interest on the sum of \$2000.00 at the rate of one per cent per month from the 5th day of February, 1918, to the 25th day of June, 1918, together with interest at the rate of one per cent per month on the sum of \$1500.00 from the 25th day of June, 1918, to this date; and also for such further sum as you deem reasonable for attorney’s fees.”

and in overruling plaintiffs’ objection thereto, which was as follows:

“Plaintiffs except to Instruction No. 8 given by the Court to the jury, on the ground that the Court takes the [173] matter entirely

out of the hands of the jury and passes upon matters of fact that should be passed upon by the jury, and that it is contrary to law.”

Plaintiffs' Exception No. 13.

(14) The Court erred in giving to the jury its Instruction No. 9, which was as follows:

“You are instructed that by reason of the foregoing instruction there is left for your consideration to be determined by you whether or not the plaintiff could prevail as to the first cause of action set forth in the complaint, in which the plaintiff alleges that the defendant George Weber is indebted to plaintiff in the sum of \$3000.00 and interest on a certain promissory note dated the 31st day of October, 1917, which is set forth in paragraph 4 of plaintiff's complaint, and which it is alleged that the plaintiff David H. Cascaden paid on the 25th day of June, 1918, in full, together with \$30.00 interest thereon, and which it is alleged that the defendant Weber has not repaid to the plaintiff, and that the whole of said sum of \$3,030.00 with interest at the rate of one per cent per month from the 25th day of June, 1918, is now due and unpaid; and also for the sum of \$600.00 attorney's fee in instituting and conducting this litigation with reference to this first cause of action; and also for the sum of \$150.00 for instituting and maintaining the litigation with reference to plaintiff's second cause of action on the note for \$500.00, with interest, the principal of which

said note and interest is admitted by the defendant to be due to the plaintiff.” and in overruling plaintiffs’ objection thereto, which was as follows:

“Plaintiffs except to Instruction No. 9 given by the Court to the jury, for the reason that it is predicated upon the eighth instruction, to which we have heretofore excepted, in that it limits the findings of the jury simply to matters contained in plaintiffs’ complaint, having already instructed the jury to bring in a verdict in favor of the defendant upon his counterclaim.”

Plaintiffs’ Exception No. 14.

(15) The Court erred in giving to the jury its Instruction No. 13, which was as follows:

“You are further instructed that if one of the signers of a note is compelled to pay the whole note, any or all the other signers of the note are liable for the repayment to the party who paid the note of the amount that was paid on the note over and above what was for the personal use or benefit of the person who paid the note; and if you are satisfied by a fair preponderance of evidence that no part of the money represented by the \$3000.00 note given to the Farmers’ Bank of Fairbanks was for the use and benefit of David H. Cascaden, then you are instructed that the defendant would be liable to David H. Cascaden and to his guardian for the entire amount that said David H. Cascaden was compelled to pay to the



Farmers' Bank of Fairbanks, unless you [174] find that said indebtedness of Weber and Petree was transferred to the Fairbanks Beverage Company by and with the consent of said David H. Cascaden."

and in overruling plaintiff's objection thereto, which was as follows:

"Plaintiffs except to the last portion of Instruction No. 13 given by the Court to the jury, wherein it is recited as follows: 'Unless you find that said indebtedness of Weber and Petree was transferred to the Fairbanks Beverage Company by and with the consent of said David H. Cascaden,' as said instruction is not pertinent to the issue, and there is no evidence whatsoever as to the assuming of any indebtedness by the Fairbanks Beverage Company of Petree and Weber, and that it is contrary to law."

Plaintiffs' Exception No. 15.

(16) The Court erred in giving to the jury its Instruction No. 15, which was as follows:

"You are instructed that if David H. Cascaden paid the note set forth in plaintiff's first cause of action to the Farmers' Bank of Fairbanks and took a note for \$3033.00 and a mortgage from the Fairbanks Beverage Company, this act on the part of Cascaden constituted a payment of the promissory note set forth in plaintiff's first cause of action; and the question as to whether or not the mortgage so taken was a first or second mortgage



is immaterial, and also as to whether or not said note of \$3033.00 was or was not paid by the Fairbanks Beverage Company is immaterial, because the debt was changed by the aforesaid transaction from David Petree and defendant to the Fairbanks Beverage Company by express agreement with plaintiff Cascaden; and in that event the defendant Weber was released entirely from any obligations on account of said note set forth in plaintiff's first cause of action, and the said Cascaden can look only to the Fairbanks Beverage Company for payment of the said note for \$3033.00, and the defendant Weber would not be responsible for the payment of the same, or any part thereof, and your verdict should be for the defendant on plaintiff's first cause of action."

and in overruling plaintiffs' objection thereto, which was as follows:

"Plaintiffs except to Instruction No. 15 given by the Court to the jury, as the Court invades the province of the jury and passes upon facts that should be left to the jury, virtually instructs them on questions of fact and not on questions of law, and is contrary to law."

Plaintiffs' Exception No. 16.

(17) The Court erred in giving to the jury its Instruction No. 16, which was as follows:

"You are instructed that there is no evidence in this [175] case whatever that would tend to prove that the note for \$3033.00, executed by the Fairbanks Beverage Company in

favor of plaintiff David H. Cascaden, was given as additional security for the payment of said promissory note marked Plaintiff's Exhibit 'A'; and there is nothing contained in the complaint of plaintiffs by which competent evidence could be introduced to show that said note for \$3033.00, executed by the Fairbanks Beverage Company to the plaintiff David H. Cascaden, was given as additional security for the payment of said note of \$3000.00, marked Plaintiff's Exhibit 'A'; and the jury are therefore instructed that they would not be warranted in considering said note of \$3033.00 as additional security for the payment of said promissory note marked Plaintiff's Exhibit 'A.' "

and in overruling plaintiff's objection thereto, which was as follows:

"Plaintiffs except to Instruction No. 16 given by the Court to the jury, on the ground that it is contrary to law and invades the province of the jury."

Plaintiffs' Exception No. 17.

(18) The Court erred in refusing to give to the jury the plaintiffs' proposed instructions numbered 1, 2, 3, 6, 7, 8, and 9, as hereinabove set forth, and in overruling plaintiffs' objection to said refusal to do so, said objection being as follows:

"Plaintiffs except to the refusal of the Court to give the proposed instructions submitted by plaintiffs, numbered 1, 2, 3, 6, 7, 8, and 9."

Plaintiffs' Exception No. 18.

JOHN A. CLARK,

Attorney for Plaintiffs and Plaintiffs in Error.

Due service of the foregoing assignment of errors and receipt of copy thereof acknowledged this 21st day of July, 1923.

R. F. ROTH,

Attorney for Defendant.

[Endorsed]: Filed Jul. 21, 1923. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [176]

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[Title of Court and Cause.]

**Petition for Writ of Error.**

David H. Cascaden and Blanche Cascaden as guardian of the estate of David H. Cascaden, an insane person, plaintiffs in the above-entitled action, feeling themselves aggrieved by the verdict of the jury rendered herein on the 2d day of April, 1923, and the judgment of the Court made and entered herein, in pursuance of said verdict, on the 18th day of April, 1923, against the plaintiffs herein for the sum of \$1,500.00 and interest in sum of \$951.33 and for costs of suit, now comes John A. Clark, attorney for plaintiffs, and petitions this honorable Court for an order allowing said plaintiffs to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, according to the laws in that behalf made and provided; now, therefore, said plaintiffs' petition that an order be made fixing the amount of the security which shall

be given and furnished on said writ of error, to cover the costs incurred herein in said review, and for an order fixing Seattle, in the State of Washington, as the place for hearing said writ of error, and for such other orders and process as may cause same to be corrected by said United States Circuit Court of Appeals for the Ninth Circuit. [177]

And your petitioners will ever pray.

JOHN A. CLARK,  
Attorney for Plaintiffs.

Due service of the foregoing petition for writ of error admitted this 21st day of July, 1923.

R. F. ROTH,  
Attorney for Defendant.

[Endorsed]: Filed Jul. 21, 1923. Rob't W. Taylor, Clerk. By Grace Fisher, Deputy. [177]

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[Title of Court and Cause.]

**Suggestion of Death and Petition.**

To the Honorable the above-entitled Court and to the Defendant and his attorney:

Comes now Blanche Cascaden, administratrix of the estate of David H. Cascaden, deceased, and represents to the Court that, since the trial of the above-entitled action, David H. Cascaden, then under guardianship as an insane person, has died, and your petitioner herein has been appointed as administratrix of his estate;

Wherefore, your petitioner prays that she, as such administratrix, be substituted as party plain-

tiff in the above-entitled action in lieu of the plaintiffs therein described, and for an order reviving said action in favor of petitioner herein as such administratrix.

BLANCHE CASCADEN,  
Petitioner.

JOHN A. CLARK,  
Attorney for Petitioner.

United States of America,  
Territory of Alaska,—ss.

Blanche Cascaden, being first duly sworn, on oath deposes and says: I am the petitioner above named; I have read the foregoing petition; know the contents thereof; and the matters and things therein set forth are true, as I verily believe.

BLANCHE CASCADEN.

Subscribed and sworn to before me, this 20th day of July, 1923.

[Seal]

JOHN A. CLARK,  
Notary Public for Alaska.

Com. exp. 4/24/26.

[Endorsed]: Filed Jul. 21, 1923. Rob't W. Taylor, Clerk. By Grace Fisher, Deputy. [179]

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[Title of Court and Cause.]

**Order for Substitution.**

This matter coming on for hearing on the application of Blanche Cascaden, administratrix of the estate of David H. Cascaden, deceased, for an order

substituting her, as such administratrix, as party plaintiff in the above-entitled action, in place of herself as guardian of the estate of David H. Cascaden, an insane person, and David H. Cascaden, and it appearing to this Court that, since the trial of the above-entitled action, the said David H. Cascaden has died, and that Blanche Cascaden has been appointed as administratrix of his estate and has entered on the discharge of her duties as such, and the Court being fully advised in the premises;

It is ordered that the above-entitled action be, and it is, hereby revived in favor of the estate of David H. Cascaden, deceased, and that said Blanche Cascaden, as administratrix of the estate of David H. Cascaden, deceased, be, and she is, hereby substituted in lieu of the plaintiffs in said action as originally instituted.

Dated at Fairbanks, Alaska, this 21st day of July, 1923.

CECIL H. CLEGG,  
District Judge.

Entered in Court Journal No. 15, page 768.

[Endorsed]: Filed Jul. 21, 1923. Rob't W. Taylor, Clerk. By Grace Fisher, Deputy. [180]

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[Title of Court and Cause.]

**Order Allowing Writ of Error and Fixing Amount  
of Cost Bond.**

Whereas David H. Cascaden and Blanche Cascaden as guardian of the estate of David H. Cas-



caden, an insane person, have heretofore and on this day petitioned this Court for a writ of error from the decision and judgment against them made and entered herein, as described in said petition, to the United States Circuit Court of Appeals for the Ninth Circuit, together with an assignment of errors, within due time, and praying that an order be made, fixing the amount of the security which the said plaintiffs and plaintiffs in error should give to the Government of the United States upon said writ of error, and also designating the place where said writ of error should be heard, and said petition having on this day been duly allowed, and

Whereas, subsequent to said time, Blanche Cascaden as administratrix of the estate of David H. Cascaden, deceased, filed herein a suggestion of death of said David H. Cascaden, since the rendition of the judgment complained of in said cause, and petitioned for an order of revival in said action, in her favor as such administratrix, and this Court having thereafter duly made and entered an order reviving said action in favor of said Blanche Cascaden as administratrix of the estate of David H. Cascaden, deceased, and directing that she, as such administratrix, be substituted as plaintiff in said action in lieu of the [181] original plaintiffs therein named;

Now, therefore, it is ordered that said writ of error be granted, and that the place of said review shall be Seattle, in the State of Washington, and that said plaintiff and plaintiff in error shall file in this Court a bond in the sum of \$300.00, to be ap-

proved by the Judge of this Court, to the effect that, if the said plaintiff and plaintiff in error shall prosecute the said writ of error to effect and answer and pay all costs if she fail to make good her said plea, then said obligation shall be void, otherwise to remain in full force, effect, and virtue.

Dated at Fairbanks, Alaska, on this, the 21st day of July A. D. one thousand nine hundred twenty-three.

CECIL H. CLEGG,  
District Judge.

Due service and receipt of copy hereof acknowledged this 21st day of July, 1923.

R. F. ROTH,  
Attorney for Defendant.

Entered in Court Journal No. 15, page 768.

[Endorsed]: Filed Jul. 21, 1923. Rob't W. Taylor, Clerk. By Grace Fisher, Deputy. [182]

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[Title of Court and Cause.]

### **Bond On Writ of Error.**

Know all men by these presents that we, Blanche Cascaden as administratrix of the estate of David H. Cascaden, deceased, plaintiff and plaintiff in error, as principal, and J. C. Kinney and John A. McIntosh as securities, are held and firmly bound unto the defendant and defendant in error, George Weber, in the just and full sum of \$300.00, to be paid to said defendant in error, which payment, well and truly to be made, we bind ourselves, our

successors in interest and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this 21st day of July, 1923.

Whereas the above named Blanche Cascaden, as administratrix of the estate of David H. Cascaden, deceased, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to review the judgment in the above-entitled cause made and entered by the District Court for the Fourth Judicial Division of the Territory of Alaska;

Now, therefore, the condition of this obligation is such that, if the above named Blanche Cascaden as administratrix of the estate of David H. Cascaden, deceased, plaintiff in error, shall prosecute said writ of error to effect and answer and pay all costs if she shall fail to make good her said plea, then this obligation shall be void, otherwise to remain in full force, effect, and virtue. [183]

BLANCHE CASCADEN,

As Administratrix of the Estate of David H. Cascaden, Deceased,

Principal.

J. C. KINNEY,

JOHN A. McINTOSH,

Sureties.

United States of America,  
Territory of Alaska,—ss.

J. C. Kinney and John A. McIntosh, being first duly sworn according to law, on oath depose and say, each for himself and not one for the other: I

am one of the sureties on the foregoing bond; I am not an attorney or counselor at law, marshal, clerk, commissioner, or other officer of any court; I am worth the sum of \$300.00, over and above all my just debts and liabilities, in property not exempt from execution, situate in the Territory of Alaska.

J. C. KINNEY,

JOHN A McINTOSH.

Subscribed and sworn to before me on this 21st day of July, A. D. 1923.

[Seal]

JOHN A. CLARK,

Notary Public in and for the Territory of Alaska.  
My commission expires 24 April, 1926.

The foregoing bond is hereby approved.

CECIL H. CLEGG,

District Judge.

[Endorsed]: Filed Jul. 21, 1923. Rob't W. Taylor, Clerk. By Grace Fisher, Deputy. [184]

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[Title of Court and Cause.]

### **Writ of Error.**

The President of the United States of America to the Honorable Cecil H. Clegg, Judge of the United States District Court for the Territory of Alaska, Fourth Judicial Division, GREETING:

Because, in the records and proceedings, as also in the rendition of a judgment, dated the 18th of April, A. D. one thousand nine hundred twenty-three, of a plea which is, in the said United States

District Court for the Territory of Alaska, Fourth Judicial Division, before you, between David H. Cascaden and Blanche Cascaden as guardian of the estate of David H. Cascaden, an insane person, as plaintiffs and George Weber, as defendant, manifest error hath happened, to the great prejudice and damage of the said David H. Cascaden and Blanche Cascaden as guardian of the estate of David H. Cascaden, an insane person, and to Blanche Cascaden as administratrix of the estate of David H. Cascaden, deceased, substituted plaintiff in said cause, as is said and appears in the petition filed herein;

We, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if said judgment be therein given, then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, [185] State of California, together with this writ, so as to have the same at said place, in said Circuit Court, on the 21st day of August, A. D. one thousand nine hundred twenty-three, that, the records and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Ninth Circuit may cause further to be done therein, to correct such error, what of right and according to the laws and customs of the United States of America should be done.

ATTEST my hand and the seal of the United States District Court for the Territory of Alaska, Fourth Judicial Division, at the Clerk's office in the Town of Fairbanks, Alaska, on this, the 21st day of July, A. D. one thousand nine hundred twenty-three.

Allowed this 21st day of July, A. D. 1923.

Due service of the foregoing writ of error and receipt of copy thereof acknowledged this 21st day of July, A. D. 1923.

R. F. ROTH,  
Attorney for Defendant in Error.

Filed Jul. 21, 1923. Rob't W. Taylor, Clerk.  
By Grace Fisher, Deputy. [186]



[Title of Court and Cause.]

**Citation on Writ of Error.**

The President of the United States of America to  
George Weber, Defendant in Error, Above  
Named, and to R. F. Roth, His Attorney,  
GREETING :

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City and County of San Francisco, State of California, within thirty days from the date of this citation, pursuant to the writ of error filed in the office of the clerk of the United States District Court for the Territory of Alaska, Fourth Judicial Division, wherein Blanche Cascaden as administratrix of the estate of David H. Cascaden, deceased (substituted plaintiff for David H. Cascaden and Blanche Cascaden, as Guardian of the Estate of David H. Cascaden, an insane person,) is plaintiff in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in error in that behalf.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the Supreme Court of the United States, this twenty-first day of July, A. D. one thousand nine hundred twenty-three, and in the year of our Independence the one hundred forty-seventh.

ATTEST my hand and the seal of the United States District Court for the Territory of Alaska,

Fourth Judicial Division, at [187] Fairbanks, Alaska, on this the twenty-first day of July, A. D. one thousand nine hundred twenty-three.

[Seal]

CECIL H. CLEGG,

District Judge.

Due service of the foregoing citation and receipt of copy thereof acknowledged this 21st day of July, 1923.

R. F. ROTH,

Attorney for Defendant in Error.

Filed Jul. 21, 1923. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [188]

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[Title of Court and Cause.]

**Order Extending Time to and Including September 21, 1923, to File Record and Docket Cause.**

This matter coming on for hearing on the application of the plaintiff in error for an extension of time within which to have the record on writ of error in the above-entitled cause docketed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California, from the twenty-first day of August, A. D. one thousand nine hundred twenty-three, to the twenty-first day of September, A. D. one thousand nine hundred twenty-three, and it appearing to this Court that, by reason of the length of time required by the mails to go from Fairbanks, Alaska, to San Francisco, California, and delay that may be occasioned by the clerk of this Court having to make up said record, the time allowed by law for

filing and docketing said record in the Circuit Court of Appeals at San Francisco is insufficient, and that the additional time prayed for is not unreasonable, and the Court being fully advised in the premises;

It is ordered that the plaintiff in error in the above-entitled cause be, and she is, hereby given and granted an additional thirty days, within which to prepare, file, and have docketed said cause in the office of the clerk of said Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California, and that she be, and is, hereby given until and including the twenty-first day of September, A. D. one thousand [189] nine hundred twenty-three, to file said record on appeal with the clerk of the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California;

And be it further ordered that this order be, by the clerk of this Court, forwarded to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California, together with the record in said cause.

Dated at Fairbanks, Alaska, on this, the twenty-first day of July, A. D. one thousand nine hundred twenty-three.

[Seal]

CECIL H. CLEGG,

District Judge.

Entered in Court Journal No. 15, page 769.

Filed Jul. 21, 1923. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [190]

**Certificate of Clerk U. S. District Court to Transcript of Record.**

United States of America,  
Territory of Alaska,  
Fourth Division,—ss.

I, Rob't W. Taylor, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of one hundred ninety-one pages, numbered from 1 to 191, inclusive, constitutes a full, true, and correct transcript of the record on writ of error in cause No. 2579, entitled, *Blanche Cascaden*, as Administratrix of the Estate of *David H. Cascaden*, deceased, plaintiff and plaintiff in error, vs. *George Weber*, defendant and defendant in error, and was made pursuant to and in accordance with the praecipe of the plaintiff in error filed in this action, and made a part of this transcript, and by virtue of the writ of error and citation issued in said cause, and is the return thereof in accordance therewith, and I certify that the writ of error, citation on writ or error, order enlarging return day and stipulation relative to printing record, annexed hereto, are the originals thereof.

And I do further certify that the index thereof, consisting of pages numbered i to ii, is a correct index of said Transcript of Record; also that the cost of preparing said transcript and this certificate, amounting to Seventy & 55/100 Dollars (\$70.55), has been paid to me by counsel for Plaintiff in Error in this action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this court this 21st day of August, A. D. 1923.

[Seal]                      ROBT W. TAYLOR,  
Clerk, District Court for the Fourth Division of  
Alaska.

By Grace Fisher,  
Chief Deputy Clerk. [191]

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[Endorsed]: No. 4093. United States Circuit Court of Appeals for the Ninth Circuit. Blanche Cascaden, as Administratrix of the Estate of David H. Cascaden, Deceased (Substituted Plaintiff for David H. Cascaden and Blanche Cascaden, as Guardian of the Estate of David H. Cascaden, an Insane Person), Plaintiff in Error, vs. George Weber, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, 4th Division.

Filed September 7, 1923.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

